(19,095.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 129.

SALLIE J. McDANIEL, NANNIE A. HOSHALL, AND MARY E. JACKSON, APPELLANTS,

vs.

GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

INDEX.

	Original.	Print
Caption	1	1
Record entry on filing bill of complaint	1	1
Bill of complaint	2	2
Exhibit "A"—Mandate from Arkansas supreme court	12	9
Bond for costs	13	10
Petition for order of service	14	11
Order for service	17	13
Certified copy of order for service and marshal's return	19	14
Certified copy of order for service and marshal's return	22	16
Certified copy of order for service and marshal's return	25	19
Certified copy of order for service and marshal's return	28	21
Certified copy of order for service and marshal's return	31	23
Certified copy of order for service and marshal's return	34	25
Certified copy of order for service and marshal's return	37	27
Record entry on filing demurrer	40	29
Demurrer to complaint	40	30
Order for publication	42	31

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 31, 1904.

	Original.	Print
Warning order	44	32
Certificate of publication	46	34
Decree	47	34
Opinion of Trieber, J	47	35
Record entry on petition for appeal and order allowing appeal	51	37
Petition for appeal	51	37
Assignment of errors	52	38
Bond on appeal	53	39
Certificate as to appeal bond	55	40
Citation and acknowledgment of service	57	41
Clerk's certificate to transcript	59	42

1 In the United States Circuit Court for the Eastern Division of the Eastern District of Arkansas.

Be it remembered, that on the 27th day of March, 1902, complaint in equity was filed in the clerk's office of said court, which record entry and complaint are in words and figures following, to-wit:

Record Entry on Filing Bill of Complaint.

March 27th, 1902.

SALLIE J. McDANIEL, NANNIE A. HOSHALL, and MARY E. Jackson, Complainants,
vs.
GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, Solon Palmer, Crunden-Martin Woodenware Company, a Corporation; Meyer Brothers Drug Company, a Corporation; Liquid Carbonic Acid Manufacturing Company, a Corporation; The Dr. J. H. McLean Medicine Company, a Corporation; Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, a Corporation; National Lead Company, a Corporation; Henry W. Hoyt, Administrator of the Estate of John W. Andrews, Deceased; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Company, a Corporation; Van Vleet-Mansfield Drug Company, a Corporation; Claus Shear Company, a Corporation; The Coco Cola Company, a Corporation; Alfred Wright, Meriden Silver Plate Company, a Corporation, and C. F. Simmons Medicine Company, a Corporation, Defendants. } 105.

Now on this day come the complainants, by their solicitors, Messrs. G. B. Webster and J. R. Beasley, and file their bill of
2 complaint against the defendants herein.

Attest: EMERSON R. CRUM, *Clerk.*

Bill of Complaint.

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Arkansas.

SALLIE J. McDANIEL, NANNIE A. HOSHALL, and MARY E. Jackson, Complainants,
vs.
GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, Solon Palmer, Crunden-Martin Woodenware Company, a Corporation; Meyer Brothers Drug Company, a Corporation; Liquid Carbonic Acid Manufacturing Company, a Corporation; The Dr. J. H. McLean Medicine Company, a Corporation; Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, a Corporation; National Lead Company, a Corporation; Henry W. Hoyt, Administrator of the Estate of John W. Andrews, Deceased; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Company, a Corporation; Van Vleet-Mansfield Drug Company, a Corporation; Claus Shear Company, a Corporation; The Coco Cola Company, a Corporation; Alfred Wright, Meriden Silver Plate Company, a Corporation, and C. F. Simmons Medicine Company, a Corporation, Defendants. } Equity.

To the honorable the judges of the circuit court of the United States for the eastern division of the eastern judicial district of Arkansas, sitting in equity:

3 Sallie J. McDaniel, Nannie A. Hoshall and Mary E. Jackson, citizens and residents of the State of Arkansas within the meaning of the laws fixing the jurisdiction of this honorable court, bring this their bill of complaint against George M. Traylor, John F. Stratton, John F. Smith, Alfred Wright and Solon Palmer, citizens and residents of the State of New York, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, C. F. Simmons Medicine Company, the Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer Bendheim, Carl Bendheim, Henry W. Hoyt, administrator of the estate of John W. Andrews, deceased, citizens and residents of the State of Missouri, A. S. Aloe Company, a citizen and resident of the State of Illinois, National Lead Company, a citizen and resident of the State of New Jersey, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupper-

schmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpmann, Memphis Paper Company and Van Vleet-Mansfield Drug Company, citizens and residents of the State of Tennessee, Meriden Silver Plate Company, a citizen and resident of the State of Connecticut, Claus Shear Company, a citizen and resident of the State of Ohio, and the Coco Cola Company, a citizen and resident of the State of Georgia, within the meaning of the laws fixing the jurisdiction of this honorable court; and thereupon your orators show unto your honors:

1. That Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, the C. F. Simmons Medicine Company, and the Dr. J. H. McLean Medicine Company are corporations organized and existing under and by virtue of the laws of the State of Missouri. That Augusta Hirschl, Meyer H. Bendheim and Carl Bendheim are copartners under the firm name of Hirschl and Bendheim; that William N. Wilkerson and Thomas H. Chilton are co-partners under the firm name of W. N. Wilkerson and Company; that J. C. Mendenhall and John Doe are co-partners under the firm name of J. C.
4 Mendenhall and Company; that Abraham Goodman and Benjamin Goodman are co-partners under the firm name of Goodman Brothers; that Solomon Sternberg, David Sternberg and William H. Sternberg are co-partners under the firm name of Sternberg and Sons; that Henry W. Hoyt is the administrator of the estate of John W. Andrews, deceased; that A. S. Aloe Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and that National Lead Company is a corporation existing under and by virtue of the laws of the State of New Jersey; that Meriden Silver Plate Company is a corporation organized and existing under and by virtue of the laws of the State of Connecticut and that Claus Shear Company is a corporation organized and existing under and by virtue of the laws of the State of Ohio, and the Coco Cola Company is a corporation organized and existing under and by virtue of the laws of the State of Georgia; and that Memphis Paper Company and Van Vleet-Mansfield Drug Company are corporations organized and existing under and by virtue of the laws of the State of Tennessee.

2. And your orators further show unto your honors that the Crunden-Martin Woodenware Company is the successor in interest of the Martin Woodenware Company in the matters and things hereinafter mentioned, and that the National Lead Company has heretofore acquired and now owns all the assets and property formerly belonging to the Collier white lead and oil works, including the claim and demand hereinafter described and charged to have been allowed in favor of said lead and oil works, and that Henry W. Hoyt, administrator of the estate of John W. Andrews, deceased, has heretofore acquired and succeeded to all the interest of J. W. Andrews and Company in and to the claim and demand herein-

after mentioned and charged to have been allowed in favor of said J. W. Andrews and Company against the estate of Hiram Evans, deceased, and that Van Vleet-Mansfield Drug Company has
5 succeeded to all the interest of Van Vleet and Company in the matters and things hereinafter stated.

3. And your orators further show unto your honors that on the 13th day of April, 1891, one Hiram Evans, then resident in the county of St. Francis, in the State of Arkansas, died intestate, possessed of a large amount of personal property, exceeding in value the sum of twelve thousand dollars, and seized in fee of the following described real estate located in the said county and State, to-wit:

S. E. ¼ of section 9,
S. ½ of S. W. ¼ section 9,
S. W. ¼ of section 10,
S. E. ¼ of S. E. ¼ of section 10,
S. ½ of N. E. ¼ of section 10,
S. W. ¼ of N. W. ¼ of section 9,
N. W. ¼ of N. E. ¼ of section 16,
N. E. ¼ of N. W. ¼ of section 16,
S. ½ of N. E. ¼ of section 16,
N. W. ¼ of S. W. ¼ of section 16,

all in township four (4) and in range three (3) east, and containing in all 760 acres of land more or less, which said real estate was and still is of the value of about sixteen thousand dollars; that the said Evans left him surviving as his only heirs at law, your orators and their three brothers James Evans, William E. Evans and John Evans.

4. That on the 21st day of April, 1891 James Evans, one of the sons of the said Hiram Evans, was duly appointed by the probate court of St. Francis county aforesaid, administrator of the estate of said Hiram Evans, deceased, and thereafter, to-wit, on the 4th day of May, 1891, duly qualified as such and received letters testamentary and proceeded to take possession of all the assets of said estate, and that the said James Evans continued to act as such
6 administrator until the time of his death as hereinafter set forth, but wholly failed and neglected to make any settlements of his accounts with the said estate in the manner and form required by law.

5. And your orators further show unto your honors that among the assets of the said Hiram Evans, deceased, which came into the hands of his said administrator was a certain drug store in the town of Forrest City, Arkansas, together with all the stock of goods, fixtures, book accounts and other chattels contained therein, all of which the said administrator on or about the 1st day of May, 1891, sold and delivered to one John Evans; that the said John Evans thereupon took possession of the same and operated and conducted the said business in his own name and that while so operating and conducting the same he, the said John Evans, contracted and incurred

debts and obligations to the several defendants herein, aggregating the sum of three thousand dollars ($3000.00), as well as debts and obligations to various other persons, and thereafter became and was insolvent and unable to pay his said debts and obligations in full. That on or about the 27th day of May, 1892, the said John Evans transferred and delivered to the said James Evans, administrator, the said drug store and all that then remained of the stock of goods, fixtures and book accounts, and thereby rendered himself wholly and totally insolvent. That thereupon the defendants herein conspired, colluded and confederated together and with the said John Evans and with the said James Evans, administrator, to secure the payment of their said claims and demands against the said John Evans, out of the assets of the said estate of Hiram Evans, deceased, and, so conspiring and confederating, the said defendants presented to the probate court of St. Francis county, Arkansas, and the said James Evans, administrator, fraudulently and illegally approved for allowance against the estate of said Hiram Evans, de-
7 ceased, the several claims and demands against the said John Evans held by the said defendants, as follows to-wit:

Geo. M. Traylor	$21.88
The Claus Shear Co	24.48
Solon Palmer	26.44
Hirschell & Bendheim	17.50
Goodman Bros	15.00
Jno. F. Stratton & Son	71.28
Coco Cola Co	14.90
Jno. F. Smith	32.43
Liquid Carbonic Acid Mfg. Co	4.00
W. N. Wilkerson & Co	589.88
A. S. Aloe Co	4.23
The Dr. McLean Med. Co	6.80
Meyer Bros. Drug Co	548.98
Meyer Bros. Drug Co	400.71
Meyer Bros. Drug Co	284.17
Martin Wooden Ware Co	34.61
C. F. Simmons Med. Co	59.27
Collier white lead and oil works	35.63
J. C. Mendenhall Co	23.89
J. W. Andrews Co	33.45
Harpman Bros	88.25
R. Kupperschmidt	34.94
Van Vleet & Co	15.85
Alfred Wright	73.53
Meriden Silver Plate Co	125.69
Meriden Silver Plate Co	125.69
The Memphis Paper Co	8.85
Sternberg & Sons	45.25

And they, the said defendants and the said administrator, still conspiring and confederating together, procured the judgment of the said probate court establishing the same against the said estate by concealing from the said court the fact that the same were the debts and obligations of the said John Evans and cloaking the same under the name of expenses of administration of the said estate, all of which transactions were part of the same scheme and were participated in by each and all of the said defendants and by said John Evans and said James Evans, administrator.

6. And your orators further show unto your honors that the said probate court was by the law of the State of Arkansas wholly without jurisdiction to render judgment establishing the said claims and demands of the defendants herein against the said estate of Hiram Evans, deceased, even though their said claims and demands had been for goods, wares and merchandise sold and delivered to the said administrator instead of to the said John Evans, and that by
8 reason of the premises all the proceedings in said court touching the said judgments were *coram non judice* and null and void; and that the said judgments of said court establishing and allowing the respective claims and demands of the defendants herein against the said estate were wholly the result of the conspiracy and confederation hereinbefore mentioned, and the fraud practiced in pursuance thereof as aforesaid, and are, therefore, in equity and good conscience, void and ineffectual for any purpose whatsoever and ought not to be enforced, but that nevertheless the same are at law liens upon the real estate hereinbefore described and charges against the respective interests of your orators therein.

7. And your orators further show unto your honors that in pursuance of the conspiracy and confederation hereinbefore mentioned, they, the defendants herein and the said John Evans and the said James Evans, concealed from your orators the matters and things hereinbefore complained of, and failed to disclose to your orators the sale of the said drug store to the said John Evans, and the fact that the said claims and demands of the defendants herein were the personal debts and obligations of the said John Evans; that your orators were unable and did not discover the same until long afterwards, but that immediately upon such discovery your orators filed their bill in the chancery court of St. Francis county, Arkansas, in April, 1895, against these defendants, or their predecessors in interest, setting up, among other things, the matters and things hereinbefore complained of, and that after a hearing their said bill was by the said court dismissed, from which action and ruling of the said court your orators prosecuted their appeal to the supreme court of Arkansas where the judgment of said chancery court was affirmed, but without prejudice to your orators as to any of the claims and demands of the defendants herein, all of which more fully appears from the mandate of said supreme court, a copy of which, marked "Exhibit A" is herewith filed and made
9 part hereof; that thereupon your orators, acting upon the advice of counsel, set up the matters and things herein com-

plained of by way of cross-bill and defense to a certain petition praying that a day be set for the sale under a previous order of sale of the real estate in the first paragraph of this bill of complaint mentioned and described for the purpose of paying certain claims allowed against the said estate of Hiram Evans, deceased, among which were the claims and demands hereinbefore mentioned, which said petition was on the 15th day of January, 1900, filed in the probate court of St. Francis county, Arkansas, by H. P. Gorman, administrator *de bonis non* of the said estate of Hiram Evans, deceased, and was then pending in the circuit court of the said county on appeal; that the said cross-bill of your orators pended continuously in the said circuit court and in the supreme court of Arkansas until the 11th day of January, 1902, when it was held and determined by the said supreme court that neither the said probate court nor the said circuit court on appeal had jurisdiction to hear or determine equitable issues, and that your orators' remedy lay in an original proceeding in a court of competent chancery jurisdiction, and that the said action and ruling of the said supreme court was without prejudice to your orators' beginning and maintaining this bill of complaint.

8. And your orators further show unto your honors that under the law of the State of Arkansas the aforesaid judgments of the probate court of St. Francis county, Arkansas, allowing and classifying the said false, fraudulent and fictitious claims and demands of the said defendants, passed beyond the control of said probate court at the expiration of the term at which the same were rendered, and that thereafter it was not within the power of the said probate court to alter, amend or set aside the same; that the time within which your orators might have taken an appeal, or have compelled the said administrator to take an appeal from the said judgment, had expired long prior to the time when your orators acquired knowledge of the matters and things hereinbefore complained of; and that by reason thereof your orators are wholly without remedy in the premises unless the relief hereinafter prayed be granted.

9. And your orators further show unto your honors that all the acts and doings of the defendants toward procuring the said judgments of the probate court of St. Francis county, Arkansas, were wrongful, fraudulent and inequitable, and tend to the manifest wrong, injury and oppression of your orators, and that in equity and good conscience the said defendants ought not to have or enjoy the benefit or advantage of the said judgments.

10. In consideration whereof and for as much as your orators are without remedy in the premises and can only have relief in a court of equity, where matters of like nature are properly cognizable; to the end, therefore, that your orators may have the relief which in good conscience they ought to have, your orators pray the aid of this honorable court, and that the said judgments of the probate court of St. Francis county, Arkansas, be set aside and for naught

held and esteemed, and be decreed not to be valid or lawful liens upon or against the real estate described in the first paragraph hereof, or upon or against the right, title and interest of your orators in the same; and that the defendants be forever enjoined and restrained from asserting or attempting to assert or enforce the said judgments or to take any manner of benefit, profit or advantage thereunder; and that, all the defendants herein being without the limits of the jurisdiction of this court and beyond the reach of subpœna, your honors may grant an order directing that they be notified of this proceeding by publication, according to the provisions of the act of Congress approved March 3rd, 1875; and that the defendants may answer, but not under oath (such oath being
11 hereby waived), according to the practice in equity, all and singular, the matters and things hereinbefore charged and stated, and may stand to, abide and perform all such orders, directions and decrees as may be made against them in the premises.

And your orators pray your honors to grant unto them such other and further relief in the premises as the circumstances may require and as may be meet and agreeable to equity and good conscience.

And your orators, as in duty bound, will ever pray.

G. B. WEBSTER AND
J. R. BEASLEY,
Solicitors for Complainants.

STATE OF ARKANSAS, }
County of St. Francis, } ss:

Mrs. Mary E. Jackson, one of the complainants in the foregoing bill of complaint, makes oath and says that the statements therein contained are true, except such as are alleged to be made upon information and belief, and those she verily believes to be true.

MARY E. JACKSON.

Subscribed and sworn to before me, this the 26th day of March, 1902.

S. H. MANN,
[SEAL.] *Notary Public, St. Francis County, Arkansas.*

My commission expires Dec. 18th, 1904.

Endorsed: No. 105. In the cir. ct. of U. S. for east. div. of east. jud. dist. of Arkansas. Sallie J. McDaniel, *et al.* plaintiff, *vs.* George M. Traylor, *et al.* defendants. Equity. Filed March 27th, 1902. Emerson R. Crum, clerk. Copy of within complaint handed R. W. Nicholls, Esq., attorney, this April 4th, 1902. Emerson R. Crum, clerk. Copy of within bill mailed Messrs. Norton & Prewett, Forrest City, Ark., this Apr. 4, 1902. Emerson R. Crum, clerk. Copy of within complaint handed R. W. Nicholls, att'y, this December 2nd, 1902. Emerson R. Crum, clerk.

12 EXHIBIT "A."

Mandate.

STATE OF ARKANSAS, } *sct:*
In the Supreme Court, }

Be it remembered that — a term of the supreme court of the State of Arkansas begun and held at the court house in the city of Little Rock, on the 22nd day, being the 4th Monday of May, A. D. 1899, amongst others were the following proceedings, on the 25th day of November, 1899, a day of said term:

W. E. EVANS ET AL., Appellants,
vs.
E. A. ROLFE, Adm'r Estate of James Evans, Dec'd, *et al.*, Appellees.
} Appeal from St. Francis Circuit Court, in Chancery.

This cause came on to be heard upon the transcript of the record of the circuit court of St. Francis county in chancery, and was argued by the solicitors of the parties, in consideration whereof it is the opinion of the court that there is no reversible error in the proceedings and decree of said circuit court in chancery in this cause.

It is therefore ordered and decreed that the decree of said circuit court in chancery in this cause be and the same is hereby in all things affirmed with costs, but without prejudice to appellants as to the debts accruing subsequent to the death of H. Evans; the injunction issued in this cause is hereby dissolved.

It is further ordered and decreed that said appellees recover of said appellants all their costs in this court, in this cause expended, and have execution thereof as upon judgments at law.

In testimony that the above is a true copy of the decree of said supreme court therein, I, P. D. English, clerk of said supreme court, hereto set my hand and affix the seal of said court, at my office in the city of Little Rock, this Jan. 9, 1900.

[SEAL.]

P. D. ENGLISH, *Clerk*,
By J. H. CAMPBELL, *D. C.*

Endorsed: Filed Mar. 27, 1902. Emerson R. Crum, clerk.

13 *Bond for Costs.*

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

SALLIE J. MCDANIEL ET AL., Plaintiffs,
v.
GEORGE M. TRAYLOR ET AL., Defendants.

We, Sallie J. McDaniel, Nannie A. Hoshall and Mary E. Jackson, principals, and Will Kirk and M. W. Sipes, sureties, acknowledge ourselves indebted to George M. Traylor, *et al.*, the defendants named in the above mentioned suit, in the sum of two hundred dollars; to be void if the said Sallie J. McDaniel, Nannie A. Hoshall, and Mary E. Jackson shall prosecute with effect an action which they are about to commence in the United States circuit court for the eastern division of the eastern district of Arkansas at Helena, against the said George M. Traylor, *et al.*; or, if they fail to do so, shall pay all such costs as may be awarded against them by any court having cognizance thereof, by appeal or otherwise.

SALLIE J. McDANIEL,
NANNIE A. HOSHALL, AND
MARY E. JACKSON, *Principals*,
By J. R. BEASLEY, *Attorney*.
WILL KIRK,
M. W. SIPES, *Sureties*.

Approved:
EMERSON R. CRUM, *Clerk*.

FORREST CITY, ARK., *March* 26, 1902.

To all whom it may concern:

I hereby certify, that Mr. Will Kirk a merchant of Forrest City, Ark., has two thousand and forty five ($2045.00) of personal property assessed to him of the personal tax book of St. Francis county, Arkansas, and that Mr. M. W. Sipes, a merchant of Forrest City, Ark., has one thousand and fifty (1050.00) dollars, in personal property assessed to him on the personal tax book of St. Francis county, Arkansas. I further certify that either of the gentlemen are good for a two hundred ($200.00) dollar bond.

EUG. WILLIAMS,
Deputy Collector.

Endorsed: No. 105. In the U. S. circuit court, at Helena, Arkansas. Sallie J. McDaniel, *et al.*, *v.* George M. Traylor, *et al.* Bond for cost. Filed March 27th, 1902. Emerson R. Crum, clerk.

14 *Petition for Order of Service.*

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. Jackson, Plaintiffs,
v.
GEORGE M. TRAYLOR ET AL., Defendants. } 105.

The undersigned, Sallie J. McDaniel, Nannie A. Hoshall, and Mary E. Jackson, would respectfully state and show to the court that this is a suit commenced in the circuit court of the United States for the eastern division of the eastern district of Arkansas between Sallie J. McDaniel, Nannie A. Hoshall, and Mary E. Jackson, citizens of the State of Arkansas, plaintiffs, against George M. Traylor, John F. Stratton, John F. Smith, Alfred Wright, and Solon Palmer, citizens and residents of the State of New York; Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, C. F. Simmons Medicine Company, The Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer Bendheim, Carl Bendheim, Henry W. Hoyt, adm'r estate of John W. Andrews, deceased, citizens and residents of the State of Missouri; A. S. Aloe Company, a citizen and resident of the State of Illinois; The National Lead Company, a citizen and resident of the State of New Jersey; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, William H. Sternberg, David Sternberg, Solomon Harpman, Memphis Paper Company, and Van Vleet-Mansfield Drug Company, citizens and residents of the State of Tennessee; Meriden Silver Plate Company, a citizen and resident of the State of Connecticut; Claus Shear Company, a citizen and resident of the State of Ohio; and The Coco Cola Company, a citizen and resident of the State of Georgia, defendants, and that said suit is for the pur-

15 pose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing the claims filed by the parties whose names have just been mentioned against the estate of Hiram Evans, deceased, who died in said county on April 13, 1891; that said defendants, George M. Traylor and others, all of whose names and residences have just been stated and particularly set out, are not residents of this State, nor inhabitants of said eastern district of Arkansas, nor found therein, nor have they voluntarily appeared in said action.

Wherefore, plaintiffs pray that this honorable court may make an order directing that said defendants, George M. Traylor, John F.

Stratton, John F. Smith, Alfred Wright, Solon Palmer, Crunden-Martin Woodenware Co., Meyer Brothers Drug Co., Liquid Carbonic Acid Manufacturing Co., C. F. Simmons Medicine Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer Bendheim, Carl Bendheim, Henry W. Hoyt, adm'r estate of John W. Andrews, deceased, A. S. Aloe Co., The National Lead Co., Wm. N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Meriden Silver Plate Co., Claus Shear Co., and The Coco-Cola Company appear, plead, answer or demur in said suit by a day to be named by said court, and that a copy of said order be directed to be served upon them by the United States marshal of the proper district of the United States.

SALLIE J. McDANIEL,
NANNIE A. HOSHALL, &
MARY E. JACKSON,
By J. R. BEASLEY, *Attorney.*

STATE OF ARKANSAS, }
Phillips County. }

J. R. Beasley, one of the attorneys for said plaintiffs, being duly sworn, states on oath that the facts alleged in the foregoing
16 petition are true.

J. R. BEASLEY.

Subscribed and sworn to before me this the 16th day of October, 1902.

EMERSON R. CRUM, *Clerk.*

Endorsed: No. 105. Sallie J. McDaniel, *et al. v.* George M. Traylor, *et al.* Petition for order of service. Filed October 16, 1902. Emerson R. Crum, clerk.

17 *Order for Service.*

October 16th, 1902.

SALLIE J. McDANIEL, NANNIE A. HOSHALL, and MARY E. Jackson, Complainants,
vs.
GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, Solon Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants. } # 105.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and county of St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman,
18 Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of

complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

JACOB TRIEBER, *Judge.*

19 UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

Be it remembered, that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden on Monday, the 13th day of October, A. D., 1902, at the United States court rooms, in the city of Helena, the Honorable Jacob Trieber, district judge presiding and holding said court, the following proceedings were had,

October 16th, 1902, to-wit:

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. Jackson, Complainants,
vs.
GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, Solon Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants. } # 105.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and the county of St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Menden-

hall, John Doe, Richard Kupperschmidt, Abraham Goodman
20 Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate, is a true and compared copy of the order for service in the cause wherein Sallie J. McDaniel, *et al.* are complainants, and George M. Traylor, *et al.*, are defendants, as
21 the same remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:
[SEAL.] EMERSON R. CRUM, *Clerk.*

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

I certify that on the 29th day of October, A. D. 1902, at the city of St. Louis, in the eastern judicial district of Missouri, I delivered a true copy of the foregoing order of court in this cause as certified

by the clerk to Theodore F. Meyer, vice president of the within named defendant corporation Meyer Brothers Drug Company, and who was in the business office of said corporation and had charge thereof at the time of said service, the president or other higher chief officer of said corporation could not be found in the said district.

WILLIAM L. MORSEY,
United States Marshal, Eastern District of Missouri,
By E. J. WATSON, *Deputy.*

Fee $2.12

Endorsed: No. 105. Sallie J. McDaniel, *et al. v.* George M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Equity. Certified copy of order for service. Issued, October 27, 1902. Returnable, on or before December 1st, 1902. Returned and filed October 31st, 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Webster, solicitors for complainants.

22 UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

Be it remembered, that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden on Monday, the 13th day of October, A. D. 1902, at the United States court rooms, in the city of Helena, the Honorable Jacob Trieber, district judge presiding and holding said court, the following proceedings were had,

October 16th, 1902, to-wit:

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. Jackson, Complainants,
vs.
GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, Solon Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants. } # 105.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and county of

St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid C-rbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, the Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate, is a true and compared copy of the order for service in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as the same remains of record in my office.

24 In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:

[SEAL.] EMERSON R. CRUM, *Clerk.*

I have executed the within order by leaving a true and correct copy of said order with William M. Wilkerson and Thomas H. Chilton. The other defendants George M. Traylor, John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Wooden Ware Company, Myer Brothers Drug Company, Liquid Carbonic Acid M. F. G. Co., Dr. J. H. McLean Medicine Company, August Hershel, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, adm'r, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Claus Shear Company, Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, are not to be found in my district. The defendants, Memphis Paper Company, and Van Vleet-Mansfield Drug Company reside in my district, but no copies of this order forwarded for them and no service made as to them. This November 8, 1902.

FRANK S. ELGIN,
U. S. Marshal,
By A. C. LEA,
Office Deputy.

Endorsed: No. 105. Sallie J. McDaniel, *et al. v.* George M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Equity. Certified copy of order for service. Issued, October 27, 1902. Returnable, on or before December 1st, 1902. Returned and filed Nov. 13, 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Webster, solicitors for complainants. Marshal's fees, $4.10.

25 UNITED STATES OF AMERICA, }
Eastern Division, Eastern District of Arkansas. }

Be it remembered, that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden on Monday, the 13th day of October, A. D. 1902, at the United States court rooms, in the city of Helena, the Honorable Jacob Trieber, district judge presiding and holding said court, the following proceedings were had,

October 16th, 1902, to-wit:

SALLIE J. McDANIEL, NANNIE A. HOSHALL, and MARY E. Jackson, Complainants,
vs.
GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, Solon Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants. # 105.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and county of St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

26

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the United

States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate, is a true and compared copy of the order for service in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants,
27 as the same remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:

[SEAL.] EMERSON R. CRUM, *Clerk.*

This writ came to hand Nov. 20, 1902, and was executed same date on Solomon Harpman by making known to him contents of this order, and leaving copy of said order with him, as directed.

FRANK S. ELGIN,
U. S. Marshal.
A. C. LEA, *Deputy.*

Marshal's cost in case $2.00.

Endorsed: No. 105. Sallie J. McDaniel *et al. v.* Geo. M. Traylor *et al.* In U. S. circuit court at Helena, Arkansas. Certified copy of order for service. Issued, Oct. 27th, 1902. Returnable, on or before December 1st, 1902. Returned and filed Nov. 24th, 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Webster, solicitors for complainants.

28 UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

Be it remembered, that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden on Monday, the 13th day of October, A. D. 1902, at the United States court rooms, in the city of Helena, the Honorable Jacob Trieber, district judge presiding and holding said court, the following proceedings were had,

October 16th, 1902, to-wit:

SALLIE J. McDANIEL, NANNIE A. HOSHALL, and MARY E. Jackson, Complainants,
vs.
GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, Solon Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants. } # 105.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and county of St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid C-rbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

29

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made.

by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas, } ss:

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate, is a true and compared copy of the order for service in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as
30 the same remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:

[SEAL.] EMERSON R. CRUM, *Clerk.*

Marshal's Return.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } ss:

I certify that on the 20th day of November, A. D. 1902, at the city of St. Louis, in the eastern judicial district of Missouri, I delivered a true copy of the foregoing order of court as certified by the clerk to Norman E. Tevis, secretary of the within named defendant corporation The C. F. Simmons Medicine Company, and who was in the business office of said corporation and had charge thereof at the time of said service. The president or other higher chief officer of said corporation could not be found in the eastern district of Missouri.

WILLIAM L. MORSEY,
United States Marshal, Eastern District of Missouri,
By E. J. WATSON, *Deputy.*

Fee $2.12.

Endorsed: No. 105. Sallie J. McDaniel, *et al. v.* Geo. M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Certified copy of order for service. Issued, Oct. 27th, 1902. Returnable, on or before December 1st, 1902. Returned and filed Nov. 24, 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Webster, solicitors for complainants.

31 UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

Be it remembered, that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden on Monday, the 13th day of October, A. D. 1902, at the United States court rooms, in the city of Helena, the Honorable Jacob Trieber, district judge presiding and holding said court, the following proceedings were had,

October 16th, 1902, to-wit:

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. Jackson, Complainants,
vs.
GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, Solon Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants. } #105.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and county of St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman,
32 Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and that none of them are residents of the

State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA, }
Eastern Division, Eastern District of Arkansas. }

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate, is a true and compared copy of the order for service in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as the same remains of record in my office.

33 In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:

[SEAL.] EMERSON R. CRUM, *Clerk.*

I hereby certify, that on the 22nd day of November, 1902, at the city of New York, in my district, I personally served the within certified copy order for service upon the within named defendant John F. Stratton at 62 Grand St., N. Y. city, by exhibiting to him the within certified copy and at the same time leaving with him a copy certified thereof.

WM. HENKEL,
United States Marshal, Southern District of New York.

Dated Nov. 22, 1902.
J. B. B.

Endorsed: No. 105. Sallie J. McDaniel, *et al. v.* Geo. M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Certified copy of order for service. Issued, Oct. 27th, 1902. Returnable, on or before December 1st, 1902. Returned and filed November 25, 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Webster, solicitors for complainants.

34 UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

Be it remembered, that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden on Monday, the 13th day of October, A. D. 1902, at the United States court rooms, in the city of Helena, the Honorable Jacob Trieber, district judge presiding and holding said court, the following proceedings were had:

October 16th, 1902, to-wit:

SALLIE J. McDANIEL, NANNIE A. HOSHALL, and MARY E. Jackson, Complainants,

vs.

GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, Solon Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants. # 105.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and county of St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt,
35 Abraham Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and

that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate is a true and compared copy of the order for service in the cause wherein Sallie J. McDaniel, *et al.*,
36 are complainants, and George M. Traylor, *et al.*, are defendants, as the same remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:

[SEAL.] EMERSON R. CRUM, *Clerk.*

UNITED STATES OF AMERICA,
District of Connecticut, } *ss:*

MERIDEN, *Nov.* 28, 1902.

Then and by virtue hereof I made diligent search for the within named Meriden Silver Plate Co. but could not find that they had a corporate existence in this district.

Attest:

EDSON S. BISHOP,
U. S. Marshal,
By PHILIP E. BOWEN,
His Deputy.

Expense.

R. R. fare	.80
Dinner	1.00
	1.80
R. R. fare	.80
	2.60

Endorsed: No. 105. Sallie J. McDaniel *et al. v.* George M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Equity. Certified copy of order for service. Issued, October 27, 1902. Returnable, on or before December 1st, 1902. Returned and filed Dec. 1, 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Webster, solicitors for complainants.

37 UNITED STATES OF AMERICA, }
Eastern Division, Eastern District of Arkansas. }

Be it remembered, that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden on Monday, the 13th day of October, A. D. 1902, at the United States court rooms, in the city of Helena, the Honorable Jacob Trieber, district judge presiding and holding said court, the following proceedings were had,

October 16th, 1902, to-wit:

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. Jackson, Complainants,

vs.

GEORGE M. TRAYLOR, JOHN F. STRATTON, JOHN F. SMITH, Solon Palmer, Crunden-Martin Woodenware Co., Meyer Bros. Drug Co., Liquid Carbonic Acid Mfg. Co., The Dr. J. H. McLean Medicine Co., Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Co., National Lead Co., Henry W. Hoyt, Adm'r; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abram Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Co., Claus Shear Co., The Coco Cola Co., Alfred Wright, Meriden Silver Plate Co., and C. F. Simmons Medicine Co., Defendants. } # 105.

Now on this day come the complainants and show to the court that they are all citizens of the State of Arkansas, and county of St. Francis; that this is a suit brought by them for the purpose of annulling, cancelling and setting aside certain orders or judgments of

the probate court of St. Francis county, Arkansas, allowing claims filed by said George M. Traylor and John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, Dr. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman,
38 Solomon Sternberg, David Sternberg, Willaim H. Sternberg, Solomon Harpman, Memphis Paper Co., Van Vleet-Mansfield Drug Company, Claus Shear Company, The Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, against the estate of Hiram Evans, who died in said county on April 13th, 1891; that all of said parties have been made defendants to this suit, and that none of them are residents of the State of Arkansas, or are to be found within the limits of this district, nor have voluntarily appeared thereto.

It is therefore ordered that said George M. Traylor and all of the other defendants to this suit whose names have been heretofore mentioned be required to appear in this court on or before the first Monday in January, 1903, and plead, answer or demur to the bill of complaint herein, and that in case of their failure to appear on that day a *pro confesso* may be taken against them for their default.

It is also ordered that a copy of this order be served on each of said parties wherever he may be found; such service shall be made by the United States marshal for the proper district of the United States, and the return of said marshal of such service shall be deemed sufficient proof of the service of the order.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing two pages, including this certificate, is a true and compared copy of the order for service in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as the same remains of record in my office.

39 In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 27th day of October, A. D. 1902, and in the 127th year of our Independence.

Attest:

[SEAL.] EMERSON R. CRUM, *Clerk.*

Department of Justice. Office of United States marshal, western district of New York.

ELMIRA, N. Y., *Nov.* 26, 1902.

Emerson R. Crum, Esq., clerk United States courts, Helena, Arkansas.

DEAR SIR: I herewith return writ in the case of McDaniel *et al. vs.* Traylor *et al.*, unserved.

I am informed by my deputy at Rochester, New York, that Alfred Wright, of 333 West avenue, died in 1891. He was engaged in the perfumery business and in 1893 the business was reorganized under the firm name of "Alfred Wright Perfumer." This firm is composed of Alfred *G.* Wright and John S. Wright. Alfred G. Wright is now out of town and his exact location is unknown. He will be away several weeks.

If you desire service to be made upon Alfred G. Wright, kindly change return date and return papers to me and I will endeavor to serve same immediately upon their receipt.

Yours very truly,

WM. R. COMPTON,
U. S. Marshal, W. D. N. Y.

Endorsed: No. 105. Sallie J. McDaniel, *et al. v.* Geo. M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas, Equity. Certified copy of order for service. Issued, Oct. 27th, 1902. Returnable, on or before December 1st, 1902. Returned and filed December 1st, 1902. Emerson R. Crum, clerk. J. R. Beasley and G. B. Webster, solicitors for complainants.

40 *Record Entry on Filing Demurrer.*

Before the Clerk, January 5th, 1903.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants. } 105.

On this day came the defendants, W. N. Wilkerson & Co., Meyer Bros. Drug Co., S. Harpman, John F. Stratton and The C. F. Simmons Medicine Co., by their solicitors, Messrs. W. N. Norton and R. W. Nicholls, and file their demurrer to the complaint of the complainants herein.

Demurrer to Complaint.

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Arkansas.

SALLIE J. MCDANIEL, NANNIE A. HOSHALL, and MARY E. JACKSON, Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

Demurrer of the defendants W. N. Wilkerson & Co., Meyer Bros. Drug Co., S. Hartman and such other defendants as have been served with process, to-wit, John F. Stratton, C. F. Simmons Medicine Co.

These defendants, by protestation, not confessing any or all of the matters and things in the plaintiff's bill of complaint contained to be true, in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth that,

First. That there is no equity in complainants' bill.

Second. That complainants' bill does not state facts suffi-
41 cient to constitute a cause of action, nor to entitle complainants to any relief.

Third. That according to the allegations of said bill the same facts and the same supposed cause of action have been in litigation in the courts of the State of Arkansas and twice appealed to the supreme court and there adjudged. Wherefore, all the matters and things in complainants' said bill alleged are *res adjudicata.*

4th. That this court has no jurisdiction of the parties and subject matter of this action.

5th. And that this court has no jurisdiction of this suit, for want of proper parties defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendants do*th* demur thereto, and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill; and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

N. W. NORTON AND
R. W. NICHOLLS,
Counsel for D'f'ts.

I am of counsel for the defendants who interpose the foregoing demurrer and I hereby certify that in my judgment the said demurrer is well taken.

R. W. NICHOLLS.

STATE OF TENNESSEE, }
County of Shelby. }

I, W. N. Wilkerson, on my oath say that I am one of the defendants in the above entitled cause and that the foregoing demurrer is not interposed for delay.

W. N. WILKERSON.

Subscribed and sworn to before me this 27th day of December, 1902.

[SEAL.] W. R. CROSS,
Notary Public.

My com. expires July 1904.

42 Endorsed: No. 105. Sallie J. McDaniel, *et al. vs.* Geo. M. Traylor, *et al.* Dem. to comp. Filed Jan. 5, 1903. Emerson R. Crum, clerk. Copy of within demurrer forwarded J. R. Beasley, attorney, at Forrest City, Arkansas, this January 6th, 1903. Emerson R. Crum, clerk.

Second day of the March term, 1903, Tuesday, March 10th, 1903.

Presiding and holding said court, Honorable Jacob Trieber, U. S. district —, and other officers as noted on the 9th day of March last past.

In the Circuit Court of the United States, Eastern Division, Eastern District of Arkansas.

SALLIE J. MCDANIEL ET AL., Complainants, }
vs. } 105. Equity.
GEORGE M. TRAYLOR ET AL., Defendants. }

Now on this day come the complainants in open court and present their application for substituted service upon the following named defendants, to-wit: George M. Traylor, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Liquid Carbonic Acid Manufacturing Company, The Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of John W. Andrews, deceased, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Memphis Paper Company, Van Vleet Mansfield Drug Company, Alfred Wright, Claus Shear Company, The Coco Cola Company, and Meriden Silver Plate Company,

And it appearing to the court that this action is brought for the purpose of enjoining the collection of certain judgments obtained

by the defendants against the estate of Hiram Evans, de-
43 ceased, and removing the cloud cast by the same upon the title to property owned by complainants, as heirs at law of Hiram Evans, dec'd, within the eastern division of the eastern judicial district of Arkansas, and that the aforesaid defendants are absent from said district, and are not residents or inhabitants of said district and cannot be found therein, but are, each and all of them, non-residents of the State of Arkansas, but whose residence complainants have, after due diligence, been unable to ascertain, and that process issued to be served in the districts where they formerly resided, has been returned by the marshal of said districts as not found, and it being shown that they have not entered their appearance herein voluntarily, and that it is not practicable to serve them personally,

It is ordered by the court that they, the defendants hereinabove named, appear and plead, answer or demur to the bill of complaint of the complainants herein on or before the first Monday in June, 1903, or suffer a decree *pro confesso* against them in the event of their failure so to do.

And it is further ordered, that a certified copy of this order be published at least once a week for six consecutive weeks in the Helena Weekly World, a newspaper printed and published within the said district.

JACOB TRIEBER, *Judge.*

44 *Warning Order.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

Be it remembered, that at a circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden on Monday, the 9th day of March, A. D. 1903, at the United States court room in the city of Helena, Arkansas, the Honorable Jacob Trieber, United States district judge, presiding and holding said court, the following proceedings were had, to-wit:

March 10th, 1903.

In the Circuit Court of the United States, Eastern Division, Eastern District of Arkansas.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants. } No. 105. Equity.

Now on this day come the complainants in open court and present their application for substituted service upon the following named defendants, to-wit: George M. Traylor, John F. Smith, Solon

Palmer, Crunden-Martin Woodenware Company, Liquid Carbonic Acid Manufacturing Company, The Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of John W. Andrews, deceased, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Memphis Paper Company, Van Vleet Mansfield Drug Company, Alfred Wright, Claus Shear Company, The Coco Cola Company, and Meriden Silver Plate Company,

And it appearing to the court that this action is brought for the purpose of enjoining the collection of certain judgments obtained by the defendants against the estate of Hiram Evans,
45 deceased, and removing the cloud cast by the same upon the title to property owned by complainants, as heirs at law of Hiram Evans, dec'd, within the eastern division of the eastern judicial district of Arkansas, and that the aforesaid defendants are absent from said district, and are not residents or inhabitants of said district and cannot be found therein, but are, each and all of them, non-residents of the State of Arkansas, but whose residence complainants have, after due diligence, been unable to ascertain, and that process issued to be served in the districts where they formerly resided, has been returned by the marshal of said districts as not found, and it being shown that they have not entered their appearance herein voluntarily, and that it is not practicable to serve them personally,

It is ordered by the court that they, the defendants hereinabove named, appear and plead, answer or demur to the bill of complaint of the complainants herein on or before the first Monday in June, 1903, or suffer a decree *pro confesso* against them in the event of their failure so to do.

And it is further ordered, that a certified copy of this order be published at least once a week for six consecutive weeks in the Helena Weekly World, a newspaper printed and published within the said district.

(Signed) JACOB TRIEBER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas,

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the above and foregoing writing annexed to this certificate is a true and compared copy of the order of court in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as the
46 original remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at office in the city of Helena, this the

16th day of March, A. D. 1903, and of the Independence of the United States the 127th.

Attest:

[SEAL.] EMERSON R. CRUM, *Clerk.*

Certificate of Publication.

STATE OF ARKANSAS, }
County of Phillips. }

I, T. J. Mitchell, do swear that I am chief accountant of the Helena Daily and Weekly World, a newspaper printed and having a *bona fide* circulation in said county, and which has been regularly published in said county for the period of one month next before the date of the first publication of the annexed advertisement, and do swear that said advertisement was published in the Weekly World for six consecutive times next before the 23rd of April, 1903, by six insertions in said paper, viz: in the issues of March 18th, 25th, April 1st, 8th, 15th & 22nd.

T. J. MITCHELL.

Sworn and subscribed to before me this 22 day of April, 1903.

[SEAL.] C. C. AGEE, *N. P.*

My commission expires on the 13 day of Sept. 1903.

Endorsed: No. 105. Sallie J. McDaniel, *et al. vs.* Geo. M. Traylor, *et al.* Proof of publication. Filed April 23, 1903. Emerson R. Crum, clerk.

47 Nineteenth day of the March term, 1903, Monday, July 13th, 1903.

Presiding, Honorable Jacob Trieber, U. S. district judge.

Decree.

SALLIE J. MCDANIEL ET AL., Complainants, }
vs. } 105.
GEORGE M. TRAYLOR ET AL., Defendants. }

The court being sufficiently advised as to what judgment to render on the demurrer to the jurisdiction of the court, heretofore submitted, and by the court taken under advisement, doth sustain the same.

It is therefore ordered, adjudged and decreed by the court that complainants' bill be dismissed for want of jurisdiction.

JACOB TRIEBER, *Judge.*

Opinion of the Court.

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

SALLIE J. McDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

On demurrer to jurisdiction.

G. B. Webster, and J. R. Beasley, for complainants.
N. W. Norton and R. W. Nicholls, for defendants.

TRIEBER, *District Judge:*

This action was instituted by complainants, children and heirs at law of Hiram Evans, who died intestate seized of considerable personal property and valuable real estate lying and situate in this district. The object of the bill is to set aside as fraudulent a number of judgments rendered by the probate court of St. Francis county, Arkansas, in favor of the defendants against the estate of
48 their deceased father which are liens on the real estate, which, by the laws of descent of the State of Arkansas, has been inherited by complainants.

The value of the real estate, affected by the liens of these judgments, exceeds two thousand dollars, it is alleged in the bill, and so does the aggregate amount of the judgments of all the defendants, but no one of the judgments in favor of any one of the defendants exceeds that sum.

The diversity of citizenship necessary to give a national court jurisdiction is shown by the bill, and the only question to be determined is whether the amount necessary to confer jurisdiction on this court, is the aggregate amount of the judgments in favor of all the defendants, or whether each defendant's judgment must exceed the sum of two thousand dollars, exclusive of interest.

Although numerous defendants have been joined in the suit, the proceeding is, in fact, against each defendant separately. There is no allegation in the bill which makes the defendants liable jointly. Each of the judgments in favor of the numerous defendants stands separately and requires separate proof as to its invalidity. If a decree is rendered in favor of the complainants against all defendants, it must be entered against each one separately, as in cases of separate suits.

Such being the case, the value of the matter in dispute with each defendant must be the sum of his own judgment, and these separate and distinct interests cannot be joined for the purpose of making up the proper amount necessary to give this court jurisdiction.

Cases direct in point as to the jurisdiction of the circuit court are Walter *vs.* Railroad Company, 147 U. S. 370; Railroad Company *vs.* Walter, 148 U. S. 392; Fishback *vs.* Western Union Telegraph Co. 161 U. S. 96; Citizens Bank *vs.* Cannon, 164 U. S. 319.

49 In Walter *vs.* Railroad Company, the court says:

"Is the plaintiff entitled to join them all in a single suit in a Federal court and sustain the jurisdiction by reason of the fact that the total amount involved exceeds two thousand dollars? We think not. It is well settled in this court that when two or more plaintiffs, having separate interests, unite for the convenience of litigation in a single suit, it can only be sustained in the court of original jurisdiction, or on appeal in this court, as to those whose claims exceed the jurisdictional amount, and that when two or more defendants are sued by the same plaintiffs in one suit, the test or jurisdiction is the joint or several character of the liability of the plaintiff." 147 U. S. 373.

The cases in which the Supreme Court has dismissed appeals in which the jurisdiction of that court depended on the amount involved, are based upon the same principle. They are too numerous to cite, but a large number of them are collected in the opinion of the court in Gibson *vs.* Shufeldt, 122 U. S. 27.

As stated by Mr. Justice Bradley, in Clay *vs.* Field, 138 U. S. 464–479:

"The general principle observed in all cases is that if several persons be joined in a suit in equity or admiralty and have a common and undivided interest, though separable as between themselves, the amount of their joint claim of liability will be the test of jurisdiction, but when their interests are distinct and they are joined for the sake of convenience only, and because they form a class of parties whose rights or liabilities arose out of the same transaction, or have relation to a common fund or mass of property sought to be administered, such distinct demands or liabilities cannot be aggregated together for the purpose of giving this court jurisdiction by appeal, but each must stand or fall by itself alone."

50 Nor can the jurisdiction of the court be sustained upon the ground that the value of the real estate, on which these judgments are liens and consequently clouds on complainants' title, exceeds the sum of two thousand dollars, for the value in dispute is not the value of the property on which the judgment is a lien, but the amount of each judgment, or the amount each defendant will have to be paid to release his lien, if his judgment is not set aside. Linehan *vs.* Pendergrass, 15 C. C. A. 585, 70 Fed. 1; Werner *vs.* Murphy, 60 Fed. (C. C.) 769; Busey *vs.* Smith 67 Fed. (C. C.) 13.

"By matter in dispute," says the Supreme Court, "is meant the subject of litigation; the matter for which the suit is brought, and upon which the issue is joined, and in relation to which jurors are called, and witnesses examined." Lee *vs.* Watson 1 Wall. 337. What is the matter for which the suit is brought? Not the title to

the land, but to cancel judgments, which incidentally are liens on the land.

The rule would be different if the cloud on the title consisted of a claim on the part of the defendants which would affect the absolute title of the property and which could not be discharged by the payment of money. In such a case, the title to the land being involved, its value determines the jurisdiction of the court. This distinction is fully recognized in the principal case relied upon by counsel for complainants. Woodside *vs.* Cieroni, 35 C. C. A. 177, 93 Fed. 1.

The demurrer to the jurisdiction must be sustained and the bill dismissed.

Endorsed: # 105. Sallie J. McDaniel, *et al. vs.* Geo. M. Traylor, *et al.* Opinion. Filed June 21, 1903. Emerson R. Crum, clerk.

51 *Record Entry on Petition for Appeal and Order Granting Same.*

September 23rd, 1903.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants. } 105.

On this day come the complainants, by their solicitors, Messrs. G. B. Webster and J. R. Beasley, and file their petition for appeal, assignment of errors, and bond on appeal, in this cause, which said petition for appeal is endorsed as follows: "Appeal allowed, returnable in thirty days upon execution of a cost bond for $250.00, which is presented and approved.

JACOB TRIEBER,
U. S. Dist. Judge, Eastern District of Ark.

Petition for Appeal.

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants. } No. 105. Equity.

The complainants in the above entitled cause, believing themselves aggrieved by the decree dismissing their bill for want of jurisdiction, heretofore rendered and entered of record therein, do hereby appeal from the said order and decree to the Supreme Court of the United States, for the reasons set out in the assignment of errors

hereto attached, and pray that their appeal may be allowed, and that a transcript of the record and proceedings upon which said decree was entered, duly authenticated, may be sent to the said Supreme Court.

G. B. WEBSTER,
J. R. BEASLEY,
Solicitors for Complainants.

52 Appeal allowed, returnable in thirty days upon execution of a cost bond for $250.00, which is presented and approved.

JACOB TRIEBER,
U. S. Dist. Judge, Eastern District of Ark.

Endorsed: No. 105. Sallie J. McDaniel, *et al.*, complainants, *vs.* George M. Traylor, *et al.*, defendants. In U. S. circuit court at Helena, Arkansas. Petition for appeal. Filed Sept. 23, 1903. Emerson R. Crum, clerk.

Assignment of Errors.

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas.

SALLIE J. MCDANIEL ET AL., Complainants,
vs.
GEORGE M. TRAYLOR ET AL., Defendants.

Now come the complainants in the above entitled cause by their solicitors and say that the decree heretofore rendered therein is erroneous and against their just rights for the following reasons, to-wit:

1. Because the said circuit court erred in denying its own jurisdiction therein.

2. Because it was error on the part of the circuit court to sustain the demurrer of the defendants therein for want of jurisdiction and error to dismiss the complainants' bill upon the said demurrer for that reason.

Wherefore for these reasons and causes apparent upon the face of the record therein, the said complainants pray that the said errors may be corrected, and the decree rendered and entered as aforesaid by the said circuit court of the United States for the eastern division of the eastern judicial district of Arkansas may be set aside
53 and for naught held and esteemed, and that the said circuit court may be directed by the honorable the Supreme Court of the United States to take jurisdiction of the said cause and to proceed further therein as equity and justice may require.

G. B. WEBSTER,
J. R. BEASLEY,
Solicitors for Complainants.

Endorsed: No. 105. Equity. In the circuit court of the United States for the eastern division of the eastern district of Arkansas. Sallie J. McDaniel, *et al.*, plaintiffs *vs.* George M. Traylor, *et al.*, defendants. Assignment of errors. Filed Sept. 23, 1903. Emerson R. Crum, clerk.

Bond on Appeal.

Know all men by these presents, that we, Sallie J. McDaniel, Mary E. Jackson and Nannie A. Hoshall, principals, and Daniel Wylds and S. T. McDaniel, sureties, are held and firmly bound unto George M. Traylor, John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, The Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of estate John W. Andrews, deceased, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Company, Van Vleet-Mansfield Drug Company, Claus Shear Company, Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, in the full and just sum of ($250.00) two hundred and fifty dollars, to be paid to them, their heirs, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administra-
54 tors, jointly and severally by these presents.

Sealed with our seals, and dated this the 5th day of September in the year of our Lord one thousand nine hundred and three.

Whereas lately, at the March term, A. D. 1903, of the circuit court of the United States for the eastern division of the eastern district of Arkansas, in a suit pending in said court between Sallie J. McDaniel, Mary E. Jackson and Nannie A. Hoshall, plaintiffs, and George M. Taylor, John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, The Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator of the estate of John W. Andrews, deceased, William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, David Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Company, Van Vleet-Mansfield Drug Company, Claus Shear Company, Coco Cola Company, Alfred Wright, Meriden Silver Plate Company, and C. F. Simmons Medicine Company, defendants, judgment was rendered against the said plaintiffs, Sallie J. McDaniel, Mary E. Jackson and Nannie A. Hoshall, and the said plaintiffs have taken an appeal to

the United States Supreme Court to reverse the judgment in the aforesaid suit and obtained a citation directed to the said defendants George M. Traylor *et al.*, citing and admonishing them to be and appear in the United States Supreme Court at the city of Washington, in the District of Columbia, thirty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said Sallie J. McDaniel, Mary E. Jackson, and Nannie A. Hoshall shall prosecute said appeal to effect, and answer all costs if they fail to make good their appeal, then the above obligation to be void, else to remain in full force and virtue.

55 Sealed and delivered in presence of

SALLIE J. McDANIEL. [SEAL.]
MARY E. JACKSON. [SEAL.]
NANNIE A. HOSHALL. [SEAL.]
DANIEL WYLDS. [SEAL.]
S. T. McDANIEL. [SEAL.]

Approved
JACOB TRIEBER,
U. S. Dist. Judge, East. Dist. of Ark.

Endorsed: No. 105. Sallie J. McDaniel, *et al.*, *vs.* George M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Bond on appeal. Filed Sept. 23, 1903. Emerson R. Crum, clerk.

Certificate as to Appeal Bond.

STATE OF ARKANSAS, }
St. Francis County. }

I, George B. Mallory, clerk of the circuit and chancery courts of St. Francis county, Arkansas, do hereby certify that I am personally acquainted with Dan Wylds and S. T. McDaniel, whose names appear as sureties on appellants' appeal bond in the case of Sallie J. McDaniel, *et al. v.* George M. Traylor, *et al.* recently decided by the United States circuit court at Helena, Ark.; that said Wylds and S. T. McDaniel are substantial farmers in St. Francis county, and are owners of property much in excess of their exemptions under the law; that there is no mortgage or mortgages on the property of either of them on record in the recorder's office of said county; and that in my judgment their names as sureties on said appeal bond for $250.00 makes the bond perfectly good for that amount.

56 Witness my hand, this Sept. 7, 1903.

G. B. MALLORY, *Clerk.*

Endorsed: No. 105. Sallie J. McDaniel, *et al. vs.* George M. Traylor, *et al.* In U. S. circuit court at Helena, Arkansas. Certificate as to cost bond. Filed Sept. 23, 1903. Emerson R. Crum, clerk.

57 THE UNITED STATES OF AMERICA:

To George M. Traylor, John F. Stratton, John F. Smith, Solon Palmer, Crunden-Martin Woodenware Company, Meyer Brothers Drug Company, Liquid Carbonic Acid Manufacturing Company, The Dr. J. H. McLean Medicine Company, Augusta Hirschl, Meyer H. Bendheim, Carl Bendheim, A. S. Aloe Company, National Lead Company, Henry W. Hoyt, administrator; William N. Wilkerson, Thomas H. Chilton, J. C. Mendenhall, John Doe, Richard Kupperschmidt, Abraham Goodman, Benjamin Goodman, Solomon Sternberg, William H. Sternberg, Solomon Harpman, Memphis Paper Company, Van Vleet-Mansfield Drug Company, Claus Shear Company, Coco Cola Company, Alfred Wright, Meridan Silver Plate Company, and C. F. Simmons Medicine Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court thirty days from and after the day this citation bears date, pursuant to an order allowing an appeal, filed in the clerk's office of the circuit court of the United States for the eastern division of the eastern judicial district of Arkansas, wherein Sallie J. McDaniel, Nannie A. Hoshall and Mary E. Jackson are appellants, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Jacob Trieber judge of the district court of the United States for the eastern district of Arkansas, sitting as circuit judge, this 19th day of September in the year of our Lord one thousand nine hundred and three.

JACOB TRIEBER,
United States District Judge for the Eastern District of Arkansas, Sitting as Circuit Judge.

Service of this citation is hereby waived for such of the defendants as were served with process.

Octo. 2nd 1903.

N. W. NORTON,
Of Counsel for Def'ts & Appellees.
MEYER BROS. DRUG CO.,
Per R. W. NICHOLLS, *Its Counsel.*

58 [Endorsed:] No. 105. United States circuit court, eastern division of the eastern judicial district of Arkansas. Sallie J. McDaniel *et al. vs.* George M. Traylor *et al.* Citation. Filed October 12th 1903. Emerson R. Crum, clerk.

59 UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

I, Emerson R. Crum, clerk of the circuit court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the foregoing pages hereto attached, numbered from one to fifty-eight inclusive, including this certificate, is a true and compared copy of the record and proceedings in the cause wherein Sallie J. McDaniel, *et al.*, are complainants, and George M. Traylor, *et al.*, are defendants, as the same remains of record and on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Helena, this the 12th day of October, A. D. 1903.

{Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Arkansas.}

EMERSON R. CRUM, *Clerk.*

Endorsed on cover: File No. 19,095. E. Arkansas C. C. U. S. Term No. 129. Sallie J. McDaniel, Nannie A. Hoshall, and Mary E Jackson, appellants, *vs.* George M. Traylor, John F. Stratton, John F. Smith, *et al.* Filed October 22d, 1903. File No. 19,095.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1904.

SALLIE J. MCDANIEL,
NANNIE A. HOSHALL, AND
MARY E. JACKSON,
Appellants,
vs.
GEORGE M. TRAYLOR ET AL.,
Appellees.
No. 129.

STATEMENT.

This cause comes here upon a question of jurisdiction under the Act of 1891. The salient facts out of which it arose are these: On the 13th day of April, 1891, Hiram Evans, a resident of St. Francis County, Arkansas, died intestate, leaving as his only heirs the appellants and their brothers, James, John and William E. Evans. At the time of his death he was seized of a plantation of 760 acres, in that county, worth about $16,000.00, and owned a large amount of personal property, among which was a retail drug store in Forrest City. A few days after his death his son, James Evans, was appointed administrator by the Probate Court of St. Francis County, and after receiving his letters took possession of all the assets of the estate. His administration of the estate seems to have been informal, to say the least, for he never made any settlements of his accounts with the estate, and, shortly after

the date of his letters, he sold the drug store with all its stock, fixtures and accounts receivable, to his brother, John Evans, who thereupon took possession and conducted the business in his own name, making purchases in his own name from time to time as was necessary to replenish the stock on hand. In so doing he contracted debts to the several appellees aggregating the sum of three thousand dollars in amounts from five dollars to five hundred dollars, as well as obligations to various others not involved in this controversy, none of which was he able to pay. Confronted with this situation and pressed by his creditors, he sold and transferred the drug store and what remained of its contents to James Evans, individually, thus rendering himself wholly insolvent. As a result of the latter transaction the value of the claims held by the several appellees for goods sold to John Evans during his ownership of the drug store was materially diminished, and the possibility of their collection without costly litigation became remote. In these circumstances the appellees, either directly or through their representatives, contrived a plan for securing the payment of their claims out of Hiram Evans' estate. This scheme required the connivance of the administrator, who, as stated, was in default in the matter of his accounts, and so was easily induced by threats and promises of gain from the drug store to become a party to the proposed fraud. As charged in the bill, "thereupon the defendants herein conspired, colluded and confederated together and with the said John Evans and the said James Evans, administrator, to secure payment of their said claims and demands out of the assets of the said estate of Hiram Evans, deceased, and so conspiring and confederating, the said defendants presented to the Probate Court of St. Francis County, Arkansas, and the said James Evans, administrator, fraudulently and illegally approved for allowance, the several claims and demands against the said John Evans held by the defendants (naming them); and they, the said defendants and the said administrator, still conspiring and confederating together, procured *the judg-*

ment of the said Probate Court establishing the same against the said estate by concealing from the said Court the fact that the same were the debts and obligations of the said John Evans, and *cloaking the same under the name of expenses of administration of the said estate,* all of which transactions were part of the same scheme and were participated in by all of the said defendants and by said John Evans and said James Evans, administrator."

In fact, *the claims of these appellees were allowed in one judgment, and not separately and at different times.*

The appellants were kept in ignorance of the transactions between John Evans and his brother, the administrator, and of the nature of the claims held by the appellees and the manner in which the judgment of allowance was procured, and they did not discover the same until long afterwards, but immediately upon such discovery the appellants filed a bill, in April, 1895, in the state chancery court against the appellees to set aside the claims allowed against said estate, which included others in addition to those here involved. That court dismissed their bill, and the Supreme Court of Arkansas affirmed the judgment without prejudice as to further proceedings against the demands of these appellees, which are drawn into question in the instant case. Upon this decision the appellants, acting under the advice of counsel then representing them, set up the invalidity of the claims as a defense to a petition for an order of sale of real estate to pay debts, and that controversy pended continuously until the 11th day of January, 1902, when the Supreme Court of Arkansas decided that neither the probate court nor the circuit court on appeal had jurisdiction to hear equitable issues, and that therefore the remedy of appellants for the wrongs complained of lay in an original bill addressed to a court of equity. Immediately after that decision counsel now representing the appellants were retained and on the 27th day of March, 1902, the bill in this case was exhibited in the Circuit Court for the Eastern Division of the Eastern District of Arkansas.

The appellants, complainants below, are all citizens and residents of Arkansas, and each of the adverse parties is a citizen and resident of some other state, so that no question of diverse citizenship is involved.

The bill set out all the facts which have been stated, charged that the judgment of the Probate Court allowing the appellees' claims was wholly the result of conspiracy between them and John Evans and James Evans, the administrator, and the fraud practiced in furtherance of it, and that, although in equity null and void, the same was still an apparent lien and cloud upon the real estate described in the bill and the interest and estate of the appellants therein, and averred that under the law of Arkansas the Probate Court was powerless to arrest or set aside the judgment allowing the claims after the term at which it was rendered, and that the time for appeal had expired long before these appellants had knowledge of the facts or of anything from which they could have acquired knowledge.

The prayer was that the judgment of the Probate Court of St. Francis County, Arkansas, allowing and classifying the claims of the appellees be set aside, and that the said judgment and claims be decreed not to be valid or lawful liens against the real estate described, or the interest and estate of the appellants therein, and that the appellees be forever enjoined and restrained from attempting to assert or collect them, or taking any manner of benefit or advantage thereunder.

In due time some of the defendants appeared and demurred for want of equity in the bill and lack of jurisdiction in the Circuit Court, and the Court sustained the demurrer and dismissed the bill for want of jurisdiction because no one of the claims upon which the fraudulent judgment was predicated exceeded in amount the sum of two thousand dollars.

The appellants contend here, as they did in the lower court, that

1. This is a proceeding to remove a cloud from

title, and therefore the amount in dispute is not the value of the defendants' claims, but the value of the property upon which the cloud rests, in this case $16,000.00.

2. Such being the fact, the complainants might have exhibited their bill against any one of the defendants, and so might join them all in the same bill, unless such action would make the bill multifarious.

3. The bill was not multifarious, because the defendants were interested in the same claim or right, which rested upon the same facts, and the relief asked was the same as to each, and because, even if separate as to each, the acts complained of were part of the same fraudulent scheme or conspiracy.

The error complained of is the dismissal of the bill for want of jurisdiction, involving, as it did, a ruling against each of the above propositions.

BRIEF.

I.

The bill is one for the removal of a cloud from title within the meaning of the rule that in such cases the value of the property upon which the cloud rests, rather than the amount of the defendant's claim, is the amount in controversy for jurisdictional purposes.

Bills in equity for the removal of a cloud from the title to real estate had their origin in the bill *quia timet* of the old practice. That was itself the evolution of one of the ancient "writs of prevention" which Lord Coke says could be maintained *quia timet.*

Co. Litt. 100, a.

Of the six which he mentions, the last is the writ *"ne injuste vexes,"* and it is from this that the bill *quia timet* came. Both were precautionary in their character and intended to prevent anticipated wrongs rather than to redress those which had already been done. The instances in which the bill would lie were numerous and varied, and it need only be said here that it was maintainable wherever there was a cloud or incumbrance valid at law, but which equity would not respect or enforce.

A cloud upon title is defined to be an outstanding claim or incumbrance which, if valid, would impair or affect the title of the owner of a particular estate, and which on its face has that effect, but by extrinsic facts is invalid.

Black, Law Dict. 214.

Welden vs. Stickney, 1 App. Cas. (D. C.) 343.

"A cloud upon one's title is something which constitutes an apparent incumbrance upon it, or an apparent defect in it: something that shows *prima facie* some right of a third party, either to the whole or some interest in it."

Cooley, Taxation, 542.

Detroit vs. Martin, 34 Mich., 170.

"A cloud upon title is a title, or incumbrance, apparently valid, but in fact invalid."

Bissell vs. Kellogg, 60 Barb., 629.

"A title which, if put in evidence, would compel the production of defendant's title as a defense, is a cloud."

Lick vs. Ray, 43 Cal., 83.

"If the title is obscured, so as to render the right of the real owner less clear, there is a cloud."

Ward vs. Dewey, 16 N. Y., 531, 1. c.

This was the successful argument of the Attorney General, Sir John Mitford, in Byne vs. Vivian, 5 Ves., 604.

Whenever a deed or other instrument exists which may vexatiously or injuriously be used against a party after the evidence to impeach or invalidate it is lost, there is a cloud upon the title which equity will remove upon a proper showing.

Dull's Appeal, 113 Pa. St., 516, 1 c.

From these authorities and the allegations of the bill it necessarily follows that the judgment of the Probate Court of St. Francis County, allowing the claims of the appellees, is a cloud upon the title to the real estate described. Upon the record that judgment is valid, but in the light of extrinsic facts pleaded and by the demurrer admitted, it is void. It is an apparent lien under which, for aught the judgment roll discloses, the entire right and title of the appellants might be extinguished.

By all the adjudicated cases in the federal jurisdiction the test of the amount in controversy in similar circumstances has been the value of the real estate upon which the cloud rests and not the value of the defendant's claim.

> "Thus, a suit to quiet title to parcels of real property, or to remove a cloud therefrom, by which their use and enjoyment by the owner are impaired, is brought within the cognizance of the Court, under the statute, only by the value of the property affected."
>
> *Smith vs. Adams, 130 U. S., 175, 1. c.*

While it is true the case was not one involving relief against a fraudulent judgment based upon a money demand, the words used are plain and unequivocal and not subject to a construction which would exclude such cases. The thoughtful jurist who penned the words quoted was never at a loss for expressions to fit his meaning, and had he in-

tended to limit the doctrine he was announcing to "a cloud on the title consisting of a claim on the part of the defendant which would affect the absolute title of the property, and which could not be discharged by the payment of money," doubtless he would have made it plain.

So, too, in Parker vs. Morrill, 106 U. S., 1, the conclusion of the Court was based upon the very theory afterwards announced in Smith vs. Adams. The case was one to remove a cloud upon the title to a portion of certain lands, and the value of that part upon which the claim rested was treated as the amount in controversy. True, the appeal was dismissed, but it was done solely because the record failed to disclose the value of the lands.

Both these cases were followed by the Circuit Court in the Western District of Texas in a suit to set aside certain fraudulent conveyances as a cloud upon title.

Simon vs. House, 46 Fed., 317.

In the latter case Judge Maxey held that "in a proceeding to set aside certain conveyances as fraudulent and a cloud upon plaintiff's title, the 'matter in dispute' within the meaning of the Act of Congress of August 13th, 1888, limiting the jurisdiction of the United States Circuit Court, is the value of the land." His opinion contains liberal quotations from the previous decisions and discusses the jurisdictional question at length, yet there is nothing in it which confines the rule to "claims which would affect the absolute title of the property and which could not be discharged by the payment of money."

> "In a suit to quiet title, it is not the value of the defendant's claim that constitutes the amount in controversy; it is the value of the whole of the real estate to which the claim extends."

Woodside vs. Ciccroni, 93 Fed., 1.

In that case it was strenuously urged that the subject in controversy was not the whole of the real estate, but only the interest therein conveyed to Anderson. To this argument the Circuit Court of Appeals in the Ninth Circuit declined to yield, answering it, through Judge Gilbert, thus:

> "If the interest so conveyed to Anderson were confined to any definite portion of the real estate, there can be no doubt that the matter in controversy would be limited to that portion, and the value thereof would be the amount involved. But the rights granted to Anderson cover the whole of the land. No portion of it is exempt from the privilege of right of way, and the right to prospect and mine which he thereby acquired. Such being the case, the claim of the defendants affects the right of the complainant to the enjoyment of the whole of his estate."

And so it is in the instant case; the rights acquired by the appellees under the judgment of the Probate Court of St. Francis County "cover the whole of the land," and clearly their claims under it "affect the right of the complainants to the enjoyment of the whole of their estate."

It may be that concealed somewhere between the lines of Judge Gilbert's concise opinion lies the "distinction" which the Court below declared to be "fully recognized" in that case, but the perception of counsel has not been keen enough to discover it, and it must be left for counsel on the other side to point out. Nowhere within the length and breadth of that opinion is there one word which in its widest import tends to confine the rule to the limits given it by the Circuit Court in the case at bar.

All these cases were cited and again followed in Cowell vs. City Water Supply Co., 96 Fed., 769. There the plaintiff was the owner of but one bond of the value of one thousand dollars. The object of his bill was to set aside mortgages on real property worth nearly five hundred thousand dollars. A

motion to remand on the ground that the jurisdictional amount was not involved was overruled and the case went to the Circuit Court of Appeals. There the lower Court was overruled on the ground that the complainant appeared from the allegations of the bill to be the owner of only one three hundred and twenty-fifth part of the property, instead of the owner of the whole. In the course of his opinion, Judge Sanborn, after citing most of the foregoing cases, said:

> "If the complainant were the owner of the water works, these cases would be controlling, and the value of that property would be the test of the jurisdiction of the Court below. But since he claims to be the owner of only one three hundred and twenty-fifth part of this property, this fraction of its value, and not its whole value, is the test of the jurisdiction in this case, and that test defeats it."
>
> *Cowell vs. City Water Supply Co., 121 Fed., 53.*

Concurring in the disposition of that case, Judge Thayer said:

> "Inasmuch as the complainant in this case seeks by his bill to have certain mortgages annulled and cancelled, that are a lien upon the property in which he claims to have an equitable undivided interest, the action must be characterized as one to remove a cloud upon title. * * * In suits to remove a cloud upon a title, the value of the property affected or imperiled by the proceeding determines the amount actually in controversy, for jurisdictional purposes. Smith vs. Adams, 130 U. S., 167, and cases there cited."
>
> *Cowell vs. City Water Supply Co., 121 Fed., 57, l. c.*

In the case at bar the whole property is shown by the bill to be worth sixteen thousand dollars, and

it also appears that the complainants are three of the six heirs-at-law, so it necessarily follows that the amount in controversy is eight thousand dollars, whether there is but one defendant with a claim of one dollar or five thousand dollars, or a dozen of them with claims joint or several exceeding the jurisdictional amount.

The decisions of the courts of last resort in the several states are in perfect harmony with the federal cases to which reference has already been made. Thus, in Michigan, Judge Cooley early held that "the jurisdiction, where the title to or enjoyment of one's real estate is in question, does not depend upon the amount of the claim asserted against it, but upon the value of the land itself."

Fuller vs. Grand Rapids, 40 Mich., 395.

And that case has been approved and followed in Wight vs. Roethlisberger, 116 Mich., 241, holding that the jurisdiction to restrain the sale of lands under execution depends upon the value of the lands, rather than upon the amount of the judgment; and again in Dodge vs. VanBuren, 118 Mich., 189, holding in a bill for injunction against the enforcement of a void lien, the value of the property and not the amount of the lien is the test of jurisdiction. To the same effect are the following cases:

CONNECTICUT:

Scripture vs. Johnson, 3 Conn., 211.

LOUISIANA:

Queyrouze vs. Thibodeaux, 30 La. An., 1114.

Simon vs. Richard, 42 La. An., 842.

VIRGINIA:

Kahn vs. Kerngold, 80 Va., 342.

WEST VIRGINIA:

Ayres vs. Blair, 26 W. Va., 558.

In none of the cases mentioned is there any intimation that the test of jurisdiction is limited to "claims which would affect the absolute title of the property, and which could not be discharged by the payment of money." Even were it otherwise, it is difficult to imagine any cloud upon a title which is more likely to "affect the absolute title" than a judgment which becomes a lien upon it. No lien ever existed which could not be discharged by the payment of money in some amount, and no adverse claimant ever refused his price.

The error into which the Court below fell cannot be made plainer than by the case of Berthold vs. Hoskins, 38 Fed., 772. The bill in that case was to have declared void a tax sale of the property for forty-one dollars and eighty-five cents which clouded the complainant's title. Under the state law, as appeared from the proof taken, the complainants had an existing right of redemption, or, in other words, the power "to discharge the lien by the payment of money," to-wit: the amount due as taxes with interest and certain statutory penalties.

Now it is perfectly plain that this is an application of the rule under discussion in just such circumstances as those to which the Circuit Court in this case held it inapplicable. The absolute title to the complainant's property was affected in no different degree, and the lien under the state statute could have been "discharged by the payment of money," as well as could the inequitable claims against Hiram Evans' estate. Here, as there, the owners of the property declined to do that, choosing rather to call upon equity to relieve them. That case has gone unchallenged for fifteen years, having done duty in more than one instance as a sustaining authority, and it would seem that it ought not now to be discredited, especially since it is in consonance with the rulings of this court in like cases.

The distinction which the Circuit Court probably had in mind was thus commented upon by Judge Selden, of the Court of Appeals in New York:

> "There is, however, an obvious distinction between those instruments which merely create a personal claim against a complainant and those which affect his property, and especially his real estate. The first can rarely do him any injury so long as they remain dormant, while the latter may create such a cloud upon his title as seriously to impair its value."
>
> *Ward vs. Dewey, 16 N. Y., 531.*

Or, in other words, a forged note or other fictitious debt is one thing, while a judgment founded on either is quite another thing, so far as his property is concerned, all of which is only another way of saying that in one instance he has an adequate remedy at law, and in the other he has not.

The case of Cooper vs. Preston, 105 Fed., 403, has not been overlooked. On the contrary, it is considered an authority for the contention of appellants here. In that case, just as here, there were numerous parties. The value of the property exceeded two thousand dollars, but there was no allegation in the bill that the defendant's claims rested upon the same right or that any other privity of interest existed between them.

Judge Morrow, on the Circuit, in sustaining a plea to the jurisdiction, said:

> "In the absence of such an averment, complainant cannot maintain the jurisdiction of this Court upon the allegation that the value of the entire matter in controversy exceeds the jurisdictional amount. The rule is that where there are several defendants in an action in the United States Circuit Court it must appear affirmatively that each defendant is liable to be sued. In other words, where the controversy relates to a piece of property of the jurisdictional value, it must appear that all the defendants have a privity of interest derived from a common source of title, or it must appear that the separate claim of each defendant is of the

jurisdictional amount; Stemmler vs. McNeill, 102 Fed., 660, and cases there cited. In the present case the bill of complaint does not conform to this rule. The pleas must, therefore, be sustained."

What was lacking there is present here, and the corroliary of the proposition laid down by Judge Morrow is that when such allegations are contained in the bill the jurisdiction exists.

In the judgment of counsel, enough has already been said to demonstrate the error of the Circuit Court in ruling against the jurisdiction, and the question is submitted in perfect confidence of the correctness of the argument advanced.

II.

"he value of the property being the test of the jurisdictional amount, the complainants could have proceeded against any of the defendants irrespective of the amount of his claim, and therefore may join all in one bill, unless that would make the bill multifarious.

It would seem that this proposition is the necessary sequence of what has been said under the preceding paragraph, if the argument there advanced is sound. In fact, to do otherwise than join in one bill all defendants claiming under the same title against which the same fraud is alleged, would be to provoke a multiplicity of suits, a result the prevention of which has induced the earnest efforts of the chancellors from the earliest times. Were it true that any of these claims differed in any particular other than amount, or that the invalidity of any one rested upon facts different from those vitiating the others, there might be no joinder of defendants, but such is not the case here.

That the joinder of these defendants does not make the bill multifarious is plain from the fact

that the defendants have a common interest centering in the point at issue in the case.

Fellows vs. Fellows, 4 Cow., 632.
Story, Eq. Pl., sec. 271.

And it would be so even if the defendants claimed under separate judgments, where all were attacked for the same fraud.

Gaines vs. Chew, 2 How., 619.

The point is fully sustained by all of the cases cited and discussed in the following paragraph of the argument.

III.

Even though the value of the real estate is not the true test of the amount in controversy, the complainants were entitled to join the several defendants in one bill, and when so joined the aggregate amount of their claims was the amount in controversy.

Passing over the argument in support of the jurisdiction on the value of the real estate, or the interest of the appellants in it, the error of the Circuit Court may be demonstrated on another theory. To the general rule that where there are several parties on one side of a case each must have an interest, independent of the others, exceeding in value the jurisdictional amount, there are exceptions, as there are to almost all general rules. Where it appears from the allegations of the bill that the claims of each of the numerous class arise out of the same transaction and rest upon the same questions of law and fact, and the relief prayed by or against all is the same, there is such a community of interest that they may be joined in one bill.

1 Pomeroy, Eq. Jur. (2d Ed.), sec. 269.
Sheffield Water Works vs. Youmans, L. R. 2, Ch. 8.

Campbell vs. Mackay, 1 Myl. & Cr., 603.
Hardie vs. Bulger, 66 Miss., 577.
DeForrest vs. Thompson, 40 Fed., 375.
Brown vs. Safe Dep. Co., 128 U. S., 403.
N. Y. & N. H. R. R. Co. vs. Schuyler, 17 N. Y., 592.

Even if the transactions of which complaint is made were separate as to the several defendants, yet if it is alleged that all were part of the same fraudulent scheme or conspiracy, the bill is not multifarious.

Duff vs. Bank, 13 Fed., 65.
Pullman vs. Stebbins, 51 Fed., 10.

> **"No bill is multifarious which presents a common point of litigation, the decision of which will affect the subject matter and settle the rights of all the parties."**
>
> *Sanborn, Circuit Judge, in Curran vs. Campion, 85 Fed., 67.*

In each of the cited cases there were several defendants, and in most of them there were more complainants than one, so there can be no distinction in the number of parties on the opposite side.

Now, in all the cases where it has been held that the aggregate of the several claims could not be considered the amount in controversy, the ruling has been justified on the theory that the interests of the parties were so distinct as to require separate judgments to dispose of them, but where the interests are the fruits of a fraudulent conspiracy in which each of the several parties is an active participant and are to be measured by the same rules of law under the same facts as to each, it is clear from the foregoing authorities that all stand united in interest and may be disposed of by one decree. And it is but a step further in the course of logical reasoning to say that the value of the thing in issue,

in such a case, is the sum of all the claims of the defendants.

It is, perhaps, inevitable that in the administration of every system of jurisprudence precedents should be followed at times without consideration of the real reasons upon which they rest, but, despite that, the maxim "*Cessante ratione cessat lex*" has lost none of its import. Be that as it may, however, the sanction of judicial authority for the proposition in hand is not wanting.

> "As all the judgments in law were held in the same right and against the same parties, and as their validity depended upon the same facts, the defendant therein, in order to prevent a multiplicity of suits and the vexation and costs arising from numerous executions and levies, was entitled to bring one suit for a final decree determining the matter in dispute that was common to all the parties; and as, under the rules of equity, such a suit could be brought in a court of the United States, the aggregate amount of all the judgments sought to be annulled was the value of the matter in dispute."
>
> *Marshall vs. Holmes, 141 U. S., 589.*

In the instant case, as there, the judgment of the Probate Court establishing their demands as valid claims against Hiram Evans' estate is enjoyed by these appellees in the same right and depends for its validity upon the same facts as to each of them. More than that, each of the several claims was against the same person and arose out of the same state of facts. The only distinction between that case and this is that there one person held twenty-three judgments against the same person which were alleged to be void, while here thirty defendants assert one judgment into which have been merged thirty separate demands, but that is necessarily a distinction without a difference, unless the plurality of the judgment creditors is an element where the multiplicity of judgments is not. That it is not is obvious, because on the one hand the case is

merely one of common ownership of a single fund, the distribution of which has no bearing on jurisdictional questions, while on the other it is a case of several funds owned by a single person. From the earliest days it has been the rule in this Court that in the former class of cases the jurisdiction is determined by the amount of the whole fund, the proportion of it due to each of the claimants being immaterial, even though their several interests in it do not arise out of the same facts. In an early case where a trustee had converted the property of an estate of a value exceeding the jurisdictional amount and in which a decree was rendered ordering him to make restitution and distributing it in shares less than that sum, the jurisdiction was sustained. Said Mr. Chief Justice Taney, in such a case:

> "The matter in controversy was the sum due to the representatives of the deceased collectively, and not the particular sum to which each was entitled, when the amount was distributed among them, according to the laws of the state. They all claimed under one and the same title. They had a common and undivided interest in the claim; and it was perfectly immaterial to the appellant how it was to be shared among them. He had no controversy with either of them on that point; and if there was any difficulty as to the proportions in which they were to share, the dispute was among themselves and not with him. It is like a contract with several to pay a sum of money. It may be that the money when recovered is to be divided between them in equal or unequal proportions. Yet, if a controversy arises on the contract, and the sum in dispute upon it exceeds two thousand dollars, an appeal would clearly lie to this Court, although the interest of each individual was less than that sum."
>
> *Shields vs. Thomas, 17 How., 3.*

Recognition was accorded the same principle years later, when Mr. Justice Bradley, speaking for the Court, said, citing many such cases:

> "The general principle observed in all is that if several persons be joined in a suit in equity or admiralty, and have a common or undivided interest, though separable as between themselves, the amount of their joint claim or liability will be the test of jurisdiction."
>
> *Clay vs. Field, 138 U. S., 479, l. c.*

More to the point, perhaps, are the words of Mr. Justice Gray in a case in which a fund exceeding the jurisdictional amount was claimed by a large number of persons, some of whose demands were less than the required sum. In holding that the jurisdiction existed as to all, he said:

> "The trust fund so administered and ordered to be distributed by the Circuit Court amounting to much more than $5,000.00, the appellate jurisdiction of this Court is not affected by the fact that the amounts decreed to some of the creditors are less than that sum. It was immaterial how the sums decreed to be paid by them should be distributed, and the case does not fall under that class in which creditors, who might have sued separately, join in one bill for convenience and to save expense."
>
> *Handley vs. Stutz, 137 U. S., 369, L. C.*

> "The rulings of this Court are uniform and consistent to the effect that where several plaintiffs claim under the same title, and the determination of the cause necessarily involves that title, this Court has jurisdiction, though the individual claims of none of them exceed the requisite amount."
>
> *Davis vs. Schwartz, 155 U. S., 647.*

And so, by the same token, where the numerous parties are defendants instead of plaintiffs.

Is it not clear that by the authority of these cases the jurisdiction was to be determined by the aggregate amount of the claims which were merged into

a judgment declaring that the lands descended to these appellants should be sold to pay that amount? The issue was whether they should enjoy the heritage as it came to them, or pay more than three thousand dollars, failing which they would lose it; and the value of the thing in controversy, if not the value of the lands, was certainly three thousand dollars. Nor can it be otherwise, because after such payment, if any was made, the money would be divided between many claimants in small amounts. That result neither added to or diminished their burden, nor did it concern them in any other way. It was a matter in which the claimants alone were interested, and a dispute as to the apportionment could arise only among themselves.

Another and most recent authority supporting the contention of the appellants here is Illinois Central R. R. Co. vs. Coffery et al., 128 Fed., 770. There twenty-seven ticket brokers, some as individuals and others as partners, were engaged in buying and selling non-transferable railroad tickets. The complainant joined them as defendants in the same bill, although there was no connection between them except that they were engaged in perpetrating the same general wrong. A demurrer was interposed on the ground *inter alia* of multifariousness; that each defendant acted independently of the other and could only be proceeded against alone. In overruling the demurrer, Judge Thayer said, touching this point:

> "It is too plain for serious controversy that the convenience of all parties, including the defendants and court in which the cases are pending, will be subserved by allowing the action to proceed against the defendants collectively. Nor is it perceived that the substantial rights of any of the defendants will be jeopardized by so doing. It is not suggested that they have separate defenses to make, and even if a separate defense does exist in favor of any defendant, it can be urged with the same facility and effect in the present suit as if such defend-

ant was sued separately, and probably at less cost. Indeed, the Court feels persuaded that the plea of multifariousness is urged mainly to delay a final hearing, rather than to enable the defendants to make a defense on the merits, which they can better make if sued separately. It may be conceded that persons ought not to be called upon to make a defense to actions against third persons, when the cause of action is one with which they have no concern, and where they are in the attitude of idle spectators of the controversy; but where the cause of action is one in which they have an immediate interest, because a like cause of action exists against themselves, to which they make the same defense as others will make, and by joining them with others the convenience of everybody, including the Court, is subserved, and the rights of every one may be safeguarded and valuable time saved, no reason is perceived why they may not be joined, there being no hard and fast rule of law which forbids. Such is the case at bar. The defendants have a common interest in the questions to be litigated and it is desirable that they be heard and determined in a single trial."

These authorities amply sustain the proposition that a joinder of the several defendants below did not make the bill multifarious, and if the value of the real estate is the amount in controversy in these cases the complainants might have sued each of the defendants separately.

Hence their joinder in one bill was both permissible and proper.

In the opinion of the Circuit Court (123 Fed., 338), its ruling against the proposition was justified upon four cases which it designated as "directly in point" (Walter vs. Railroad Co., 147 U. S., 370; R. R. Co. vs. Walker, 148 U. S., 392; Fishback vs. Tel. Co., 161 U. S., 96; and Bank vs. Cannon, 164 U. S., 319).

Examination of these discloses that all of them were bills for injunction to restrain the collection of state taxes (a matter of no special favor in the federal courts at best), in which were joined the officers of different counties who had levied or were attempting to collect separate assessments made at various times. The ineptitude of these authorities seems apparent at a glance, and the lack of similarity is the plainer under the doctrine of Gibson vs. Shufeldt, 122 U. S., 27.

Respectfully submitted,

G. B. WEBSTER,
J. R. BEASLEY,
Counsel for Appellants.

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No. 129.

In the Supreme Court of the United States

OCTOBER TERM, 1904.

SALLIE J. McDANIEL, ET AL., APPELLANTS,

vs.

GEORGE M. TRAYLOR, ET AL., APPELLEES.

BRIEF FOR APPELLEES.

N. W. NORTON,
Counsel for Appellees.

Printed at The Times Office, Forrest City, Ark

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BRIEF.

Where the purpose of a Bill is to relieve property of a lien or charge, the amount of the encumbrance is the test of jurisdiction in the Courts of the United States, and not the value of the property.

In Ross vs. Prentiss, 3 How. 771, the appeal was dismissed, because the execution against which relief was sought, was for less than the jurisdictional amount. That the property upon which it was levied exceeded the jurisdictional amount in value, was unimportant. "The only matter in controversy is the amount claimed on the execution." "The jurisdiction does not depend on any contingent loss."

In Carne vs. Russ, 152 U. S., 250, the action was to remove the cloud from title, and the appeal was

dismissed upon the ground that the controverted portion of the charge against the land—a claim for for taxes—was under the jurisdictional amount.

In Farmer's Bank vs. Hoop, 7 Pet., 168, the action was to enforce a contract lien for less than the jurisdictional amount (in this court,) and after dismissal below was brought here for review, upon the contention that, the property being worth over $1000, this court had jurisdiction. The appeal was dismissed. "The matter in controversy is the debt claimed in the Bill."

An earlier case is Peyton vs. Robertson, 9 Wheat, 527. There the plaintiff's chattels had been seized for rent and she brought replevin and laid her damages at $1,000. It was held that the amount of the rent—$591—was the amount in controversy, and a motion to reinstate the case after dismissal was denied.

No one has ever succeeded in having the value of property taken as the jurisdictional test, where the purpose of the bill was to relieve it of a lien for a smaller sum. And in this connection the Court has frequently mentioned that contingent losses to come from the enforcement of the lien can not be considered. If the law were otherwise than as here claimed, a lien for one dollar could be litigated in the Federal Courts, provided it was upon property of greater value than $2,000.

This Court reviewed the authorities in Gibson vs. Shufeldt, 122 U. S., 27.

Separate causes can not be combined to make the amount necessary to jurisdiction in the courts of the United States.

On this point a reference to authorities is useless; but to avoid abruptness, an excerpt from the opinion of this Court in Walter vs. Railroad Co., 147 U. S., 370, 373, is given:

"It is well settled in this Court that when two or more plaintiffs, having several interests, unite for the convenience of litigation in a single suit, it can only be sustained in the court of original jurisdiction, or on an appeal in this court, as to those whose claims exceed the jurisdictional amount; and that, when two or more defendants are sued by the same plaintiff in one suit the test of jurisdiction is the joint or several character of the liability to the plaintiff. This was the distinct ruling of this court in Seaver vs. Bigelow, 5 Wall., 208; Russell vs. Stansell, 105 U. S., 303; Trust Co. vs. Waterman, 106 U. S., 265; Hawley vs. Fairbanks, 108 U. S., 543; Stewart vs. Dunham, 115 U. S., 61; Gibson vs. Shufeldt, 122 U. S., 27; Clay vs. Field, 138 U. S., 464."

The bill is against persons who must respond severally to the plaintiff, if at all; and neither of the judgments is for as much as $2,000.

That the several persons made defendants had separate claims and nothing jointly is manifest, and argument on the point superfluous, notwithstanding the statement in appellant's brief (3) that they were "allowed in one judgment."

It is not so alleged in the bill, and would be wholly immaterial if it were. The manner of the clerk's entry could not be very potent.

In Marshall vs. Holmes, 141 U. S., 589, the jurisdiction was not defeated by the fact that the liability had been entered in several small judgments; neither can it be given by an entry of separate matters in one general order.

Every part of the bill in the case at bar shows the separate nature of the claims that were allowed by the probate court. The statement is that "John Evans contracted and incurred debts and obligations to the several defendants herein, aggregating the sum of $3,000.00, as well as debts and obligations to various other persons, and thereafter became and was insolvent and unable to pay his debts and obligations in full, * * * * and the said James Evans, administrator, fraudulently and illegally approved for allowance against the estate of Hiram Evans, deceased, the several claims and demands against the said John Evans held by the said defendants as follows, to-wit: This statement is followed by twenty-eight separate claims in varying sums from $4.23 to $589.88. (Printed record, pp. 4, 5).

And instead of being referred to in the bill as one judgment, they are uniformly spoken of otherwise as: "The aforesaid *judgments* of the probate court of St. Francis County, Arkansas, allowing and classifying said false, fraudulent and fictitious claims and demands of the said defendants, passed

beyond the control of said probate court." * * * * And, "that all the acts and doings of the defendants toward procuring the said *judgments* of the probate court of St. Francis County, Arkansas, were wrongful, fraudulent and inequitable, and * * * the said defendants ought not to have or enjoy the benefit or advantage of the said *judgments*." And in the prayer: "And that the said *judgments* of the probate court of St. Francis County, Arkansas, be set aside and for nought held and esteemed * * * and that the defendants be forever enjoined and restrained from asserting or attempting to assert or enforce the said *judgments*, or to take any manner of benefit, profit or advantage thereunder."

Appeals in cases of this character have been uniformly dismissed.

Respectfully submitted,

N. W. NORTON,

Counsel for Appellees.

Supreme Court of the United States.

No. 129.—October Term, 1904.

Sallie J. McDaniel, Nannie A. Hoshall, and Mary E. Jackson, Appellants, vs. George M. Traylor, John F. Stratton, John F. Smith, et al.	Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

[February 20th 1905.]

Mr. Justice Harlan delivered the opinion of the Court.

This was a suit in equity instituted in the Circuit Court of the United States for the Eastern District of Arkansas by the appellants, citizens of Arkansas, against the appellees, more than thirty in number and respectively citizens, corporate and individual, of Tennessee, New York, Missouri, Illinois, New Jersey, Connecticut, Ohio and Georgia.

There was a demurrer to the bill by some of the defendants upon the ground, among others, that the Circuit Court had no jurisdiction of the parties and subject-matter. The demurrer was sustained, and the bill dismissed for want of jurisdiction.

The question of jurisdiction depends, of course, upon the allegations of the bill. The case made by the bill is this:

On the 13th day of April 1891 Hiram Evans, a resident of St. Francis County, Arkansas, died intestate and possessed of personal property exceeding $12,000 in value.

He was also seized in fee of 760 acres of land of the value of about $16,000, and left surviving him as his only heirs at law the three appellants, and three sons, James Evans, William E. Evans and John Evans.

By an order made April 21st 1891, in the Probate Court of the county, James Evans was appointed administrator of the estate of the intestate. Having duly qualified as such, he took possession of all the assets of the estate and acted as such administrator until his death.

Among the assets that came to his hands as administrator was a drug store which with its stock of goods, fixtures, book accounts and other things therein contained was sold and delivered by him to John Evans on the first day of May 1891. The latter conducted the business in his own name, and while doing so incurred debts and obligations to the defend-

ants in this suit, aggregating $3,000, as well as debts and obligations to other persons, but no single one of his debts exceeded $2,000.

John Evans became insolvent and on May 27th 1892 transferred and delivered to James Evans, administrator of Hiram Evans, the drug store and all that remained of the stock of goods, fixtures and book accounts.

Thereupon, the bill alleged, the defendants herein "conspired, colluded and confederated" together and with John Evans and with James Evans, administrator, to secure the payment of their claims and demands against John Evans out of the assets of the estate of Hiram Evans, deceased, and, "so conspiring and confederating," they presented to the Probate Court their several claims and demands—and James Evans, administrator, fraudulently and illegally approved them—for allowance against the estate of Hiram Evans.

The bill also alleged that the defendants and the administrator of Hiram Evans, still conspiring and confederating together, procured the judgment of the Probate Court establishing their claims against the estate of Hiram Evans by concealing from the court the fact that they were debts and obligations of John Evans and cloaking them under the name of expenses of administration of the said estate, "all of which transactions were part of the same scheme, and were participated in by each and all of the said defendants and by said John Evans and said James Evans, administrator."

It was further alleged: "That the said judgments of said court establishing and allowing the respective claims and demands of the defendants herein against the said estate were wholly the result of the conspiracy and confederation hereinbefore mentioned, and the fraud practiced in pursuance thereof as aforesaid, and are, therefore, in equity and good conscience, void and ineffectual for any purpose whatsoever and ought not to be enforced; but that nevertheless the same are at law liens upon the real estate hereinbefore described and charges against the respective interests" of the plaintiffs; that, in pursuance of the said conspiracy and confederation, the defendants, and John Evans and James Evans, concealed from plaintiffs the matters and things hereinbefore complained of, and failed to disclose to them the sale of the drug store to John Evans, and the fact that the said claims and demands of defendants were the personal debts and obligations of John Evans; that it had been determined by the Supreme Court of the State in certain proceedings relating to the matters here in controversy that neither the Probate Court nor the State Circuit Court on appeal had jurisdiction to hear or determine equitable issues, and that plaintiffs' remedy lay "in an original proceeding in a court of competent chancery jurisdiction, and that the said action and ruling of the said Supreme Court was without prejudice to your orators' beginning and maintaining this bill of complaint."

The bill still further alleged that under the law of Arkansas the judgments of the Probate Court, allowing and classifying the demands of defendants, passed beyond the control of that court at the expiration of the term at which the same were rendered, and that thereafter it was not within its power to alter, amend or set aside the same; that the time within which plaintiffs might have taken an appeal, or have compelled the administrator to take an appeal from the judgment, had expired long prior to the time when they acquired knowledge of the matters and things hereinbefore complained of; that by reason thereof plaintiffs are wholly without remedy in the premises unless the relief prayed be granted them; that all the acts and doings of the defendants toward procuring the said judgments of the Probate Court were wrongful, fraudulent and inequitable, and tended to the manifest wrong, injury and oppression of plaintiffs; and that in equity and good conscience the defendants ought not to have or enjoy the benefit or advantage of the said judgments.

The relief prayed was that the judgments of the Probate Court be set aside and held not to be valid or lawful liens upon or against the real estate herein described, nor upon the right, title or interest therein of the plaintiffs; that the defendants be enjoined from enforcing such judgments or from taking any benefit, profit or advantage by them; and that all the defendants being without the jurisdiction of the Circuit Court, an order be made directing them to be notified of this suit by publication, according to the provisions of the act of Congress of March 3d 1875. 18 *Stat.* 470.

By the act just referred to it was, among other things, provided: "Sec. 8. That when in any suit, commenced in any Circuit Court of the United States, to enforce any legal or equitable lien upon, or claim to, or to remove any encumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of, or found within, the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer or demur, by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks; and in case such absent defendant shall not appear, plead, answer or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order, and of the performance of the directions contained in the same, it shall be lawful for the court

to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein within such district. . ." *R. S. Suppl. pp.* 84–5; 18 *Stat.* 470, *c.* 137.

Upon demurrer to the jurisdiction of the Circuit Court that court dismissed the suit, being of opinion that the value of the matter in dispute was not sufficient to give jurisdiction. *McDaniel &c.* v. *Traylor &c.*, 123 *Fed. Rep.* 338.

If, within the meaning of the Judiciary Act of 1887–8, the value of the matter in dispute exceeded the sum of two thousand dollars, exclusive of interest and costs, (25 *Stat.* 433,) then there was no reason for dismissing the bill for want of jurisdiction in the Circuit Court; for, diversity of citizenship was shown by the bill, and under the above act of March 3d 1875, *c.* 137, 18 *Stat.* 470, it was competent for the Circuit Court, by a final decree, to remove any incumbrance or lien or cloud upon the title to real or personal property within the district, as against persons not inhabitants thereof and not found therein, or who did not voluntarily appear in the suit.

The lands of which Hiram Evans died possessed were of the alleged value of $16,000, and we assume that the plaintiffs jointly owned one undivided half of them. Was the value of the joint interest of the plaintiffs in the lands in question to be deemed the value of the matter in dispute, or was the Circuit Court without jurisdiction if no one of the alleged fraudulent claims held by the defendants exceeded two thousand dollars, exclusive of interest and costs?

Some light will be thrown upon this question by certain cases in which this court held it be competent for a Circuit Court, in a suit in equity, to deprive parties of the benefit of a judgment or order fraudulently obtained by them in a State court.

In *Johnson* v. *Waters*, 111 *U. S.* 640, 667, the question was as to the authority of a Circuit Court to set aside as fraudulent and void certain sales made by a testamentary executor under the orders of a Probate Court. Conceding that the administration of the estate there in question properly belonged to the probate court, and that in a general sense its decisions were conclusive, especially upon parties, Mr. Justice Bradley, speaking for this court said: "But this is not universally true. The most solemn transactions and judgments may, at the instance of the parties, be set aside or rendered inoperative for fraud. The fact of being a party does not

stop a person from obtaining in a court of equity relief against fraud. It is generally parties that are the victims of fraud. The Court of Chancery is always open to hear complaints against it, whether committed *in pais* or in or by means of judicial proceedings. In such cases the court does not act as a court of review, nor does it inquire into any irregularities or errors of proceeding in another court; but it will scrutinize the conduct of the parties, and if it finds that they have been guilty of fraud in obtaining a judgment or decree, it will deprive them of the benefit of it, and of any inequitable advantage which they have derived under it."

In *Arrowsmith* v. *Gleason*, 129 *U. S.* 86, 98, the question whether the Circuit Court had jurisdiction by its decree to set aside a sale of an infant's lands fraudulently made by his guardian under authority derived from a Probate Court, and give such relief as would be consistent with equity. One of the grounds of demurrer to the bill in that case was that the Circuit Court had no authority to set aside and vacate the orders of the State court. This court said: "If by this is meant only that the Circuit Court cannot by its orders act directly upon the Probate Court, or that the Circuit Court cannot compel or require the Probate Court to set aside or vacate its own orders, the position of the defendants could not be disputed. But it does not follow that the right of Harmoning, in his lifetime, or of his heirs since his death, to hold these lands, as against the plaintiff, cannot be questioned in a court of general equitable jurisdiction upon the ground of fraud. If the case made by the bill is clearly established by proof, it may be assumed that some State court of superior jurisdiction and equity powers and having before it all the parties interested, might afford the plaintiff relief of a substantial character. But whether that be so or not, it is difficult to perceive why the Circuit Court is not bound to give relief according to the recognized rules of equity, as administered in the courts of the United States, the plaintiff being a citizen of Nevada, the defendants citizens of Ohio, and the value of the matter in dispute, exclusive of interest and costs, being in excess of the amount required for the original jurisdiction of such court." "While there are general expressions in some cases apparently asserting a contrary doctrine, the later decisions of this court show that the proper Circuit Court of the United States may, without controlling, supervising or annulling the proceedings of State courts, give such relief, in a case like the one before us, as is consistent with the principles of equity."

After citing the case of *Johnson* v. *Waters*, above, the court referred to *Reigal* v. *Wood*, 1 *Johns. Ch.* 402, 406, in which Chancellor Kent said: "Relief is to be obtained not only against writings, deeds and the most solemn assurances, but against judgments and decrees, if obtained by fraud and imposition." It also referred to *Bowen* v. *Evans*, 2 *H. L. Cas.* 257,

281, in which Lord Chancellor Cottenham said: "If a case of fraud be established, equity will set aside all transactions founded upon it, by whatever machinery they may have been effected, and notwithstanding any contrivances by which it may have been attempted to protect them. It is immaterial, therefore, whether such machinery and contrivances consisted and decree of equity and a purchase under it, or of a judgment at law, or of other transactions between the actors in the fraud." The opinion of this court concluded: "These principles control the present case, which, although involving rights arising under judicial proceedings in another jurisdiction, is an original, independent suit for equitable relief between the parties, such relief being grounded upon a new state of facts, disclosing not only imposition upon a court of justice in procuring from it authority to sell an infant's lands when there was no necessity therefor, but actual fraud in the exercise, from time to time, of the authority so obtained. As this case is within the equity jurisdiction of the Circuit Court, as defined by the Constitution and laws of the United States, that court may, by its decree, lay hold of the parties and compel them to do what, according to the principles of equity, they ought to do, thereby securing and establishing the rights of which the plaintiff is alleged to have been deprived by fraud and collusion."

In *Marshall* v. *Holmes*, 141 *U. S.* 589, 595–6, it appeared that twenty-three judgments for different amounts were fraudulently procured to be rendered in a State court against a citizen of another State. Upon learning of the judgments the latter brought suit in one of the courts of Louisiana for a decree avoiding them as obtained upon false testimony, and thereafter filed a petition and bond for the removal of the case to the Circuit Court of the United States. The right of removal was denied, and the court dissolved the preliminary injunction which had been granted, and authorized Mayer, who had become the owner of the judgments, to proceed in their collection. Upon appeal to a higher State court, the original judgment was affirmed, and that judgment was brought here for review by writ of error. This court sustained the right of removal. After stating that the judgments aggregated more than three thousand dollars and were all held by Mayer and against the plaintiff, we said: "Their validity depends upon the same facts. If she is entitled to relief against one of the judgments, she is entitled to relief against all of them. The cases in which they were rendered were, in effect, tried as one case, so far as she and Mayer were concerned; for the parties stipulated that the result in each one not tried should depend upon the result in the one tried. As all the cases not tried went to judgment in accordance with the result in the one tried; as the property of Mrs. Marshall [the plaintiff] was liable to be taken in execution on all the judgments; as the judgments were held in the same right; and as their validity de-

pended upon the same facts, she was entitled, in order to avoid a multiplicity of actions, and to protect herself against the vexation and cost that would come from numerous executions and levies, to bring one suit for a decree finally determining the matter in dispute in all the cases. And as, under the rules of equity obtaining in the courts of the United States, such a suit could be brought, the aggregate amount of all the judgments against which she sought protection, upon grounds common to all the actions, is to be deemed, under the act of Congress, the value of the matter here in dispute."

The question of jurisdiction here presented arises out of facts not to be found in any case brought to our attention or which we have knowledge.

The suit is to remove a cloud on the title to certain lands of the value of $16,000. The plaintiffs, being three of the six heirs at law of the intestate, jointly own an undivided interest of one-half of those lands, but no interest in any particular part of them. If the value of their joint undivided interest, $8,000, or the value of the undivided interest of each (one-third of $8,000,) is to be taken as the value of the matter in dispute, then the Circuit Court had jurisdiction. But we are of opinion that within the meaning of the Judiciary Act of 1887–8, the jurisdiction of the Circuit Court, in this case, depended upon the value in dispute measured by the aggregate amount of the claims of the defendants.

It is contended that the jurisdiction of the Circuit Court must fail, because no one defendant has a claim of the required jurisdictional amount. In support of this contention several cases are cited of the class to which *Waller* v. *Railroad Co.*, 147 *U. S.* 370, 373, belongs. That was a suit by a railroad company against the treasurers and sheriffs of several counties through which its road passed, to enjoin them—separately, of course—from issuing executions against or seizing the property of the company for the purpose of collecting a tax based upon an assessment alleged to be unconstitutional and void. The court said: "It is entirely clear that, had these taxes been paid under protest and the plaintiff had sought to recover them back, it would have been obliged to bring separate actions in each county. As the amount recoverable from each county would be different, no joint judgment could possibly be rendered. So, had a bill for injunction been filed in a State court, and the practice had permitted, as in some States, a chancery subpœna to be served in any county of the State, these defendants could not have been joined in one bill, but a separate bill would have had to be filed in each county. It is well settled in this court that when two or more plaintiffs, having several interests, unite for the convenience of litigation in a single suit, it can only be sustained in the court of original jurisdiction, or on an appeal in this court, as to those whose claims exceed the jurisdictional amount; and that, when two or more defendants are sued

by the same plaintiff in one suit, the test of jurisdiction is the joint or several character of the liability to the plaintiff."

The case before us, however, is presented by the bill in an entirely different aspect. The case may be regarded as exceptional in its facts, and may be disposed of without affecting former decisions. There is no dispute as to the amount of any particular claim. So far as the bill is concerned, if any one of the specified claims is good against the estate of Hiram Evans, then all are good; if the lands in question, or any interest in them, can be sold to pay one claim, they must be sold to pay all. The court could not, under the bill, enjoin the prosecution of one claim and leave the others untouched. The matter in dispute is whether the lands in which the plaintiffs have a joint undivided interest of one-half can be sold to pay *all* the claims, *in the aggregate*, which the defendants, by *combination and conspiracy*, procured the Probate Court to allow against the estate of Hiram Evans. The essence of the suit is the alleged fraudulent combination and conspiracy to fasten upon that estate a liability for debts of John Evans, which were held by the defendants and which they, acting in combination, procured, in co-operation with James Evans, to be allowed as claims against the estate of Hiram Evans. By reason of that combination, resulting in the allowance of all those claims in the Probate Court, as expenses of administering the estate of Hiram Evans, the defendants have so tied their respective claims together as to make them, so far as the plaintiffs and the relief sought by them are concerned, *one* claim. The validity of all the claims depends upon the same facts. The lien on the lands which is asserted by each defendant has its origin as well in the combination to which all were parties as in the orders of the Probate Court which, in furtherance of that combination, were procured by their joint action. Those orders were conclusive against the plaintiffs, as to all the claims, if the claims could be allowed at all against the estate of Hiram Evans. A comprehensive decree by which the plaintiff can be protected against those orders will avoid a multiplicity of suits, save great expense and do justice. If the plaintiffs do not prove such a combination and conspiracy, in respect, at least, of so many of the specified claims as in the aggregate will be of the required amount, then their suit must fail for want of jurisdiction in the Circuit Court; for, in the absence of the alleged combination, the claim of each defendant must, according to our decisions, be regarded, for purposes of jurisdiction, as separate from all the others.

An instructive case on the general subject is *Shields* v. *Thomas*, 17 *How.* 1. That was a suit in equity in a Kentucky State court in which the plaintiffs, as the legal representatives of an intestate, sought a decree for certain proportionate amounts alleged to be due them respectively from the defend-

ant, who had married the widow and thereby obtained possession of the property of the deceased. The defendant was charged with having converted to his own use a large amount of the intestate's property to which the legal representatives of the intestate, plaintiffs in the suit, were entitled. In that suit a decree was rendered against the defendant for a large sum of money, "the shares of the respective complainants being apportioned to them in the decree," and the defendant being required by the decree to pay to each of the plaintiffs the specific sum to which he was entitled as his portion of the property misappropriated by him. Subsequently a suit was brought in a Circuit Court of the United States (jurisdiction being based on diversity of citizenship,) to enforce the decree rendered in the Kentucky State court, and to compel the defendant to pay to the plaintiffs, respectively, the several sums which had been decreed in their favor. A decree to that effect was rendered. The whole amount which the defendant was required by the decree to pay was large enough to give this court jurisdiction on appeal, although the specific sum awarded to each plaintiff was less than the jurisdictional sum. The defendant appealed to this court, and a motion was made to dismiss the appeal on the ground "that the sum due to each complainant is severally and specifically decreed to him; and that the amount thus decreed is the sum in controversy between each representative and the appellant, and not the whole amount for which he has been held liable."

After observing that if that view of the matter in controversy was correct, this court was without jurisdiction, Chief Justice Taney, speaking for the court, said: "But the court think the matter in controversy, in the Kentucky court, was the sum due to the representatives of the deceased collectively, and not the particular sum to which each was entitled, when the amount was distributed among them, according to the laws of the State. They all claimed under one and the same title. They had a common and undivided interest in the claim; and it was perfectly immaterial to the appellant how it was to be shared among them. He had no controversy with either of them on that point; and if there was any difficulty as to the proportions in which they were to share, the dispute was among themselves and not with him. It is like a contract with several to pay a sum of money. It may be that the money when recovered is to be divided between them in equal or unequal proportions. Yet, if a controversy arises on the contract, and the sum in dispute upon it exceeds two thousand dollars, an appeal would clearly lie to this court, although the interest of each individual was less than that sum. This being the controversy in Kentucky, the decree of that court, apportioning the sum recovered among the several representatives, does not alter its character when renewed in Iowa. So far as the appellant is concerned,

the entire sum found due by the Kentucky court is in dispute. He disputes the validity of that decree, and denies his obligation to pay any part of the money. And if the appellees maintain their bill, he will be made liable to pay the whole amount decreed to them. This is the controversy on his part; and the amount exceeds two thousand dollars. We think the court, therefore, has jurisdiction on the appeal."

The doctrines of *Shields* v. *Thomas* have been frequently recognized by this court. In the recent case of *Overby* v. *Gordon*, 177 *U. S.* 214, 218, the court, interpreting the decision in that case, said: "It was held that where the representatives of a deceased intestate recovered a judgment against an administrator for an amount in excess of the sum necessary to confer jurisdiction to review, and such recovery was had under the same title and for a common undivided interest, this court had jurisdiction, although the amount decreed to each representative was less than the jurisdictional sum." See also *The Commoner*, 103 *U. S.* 756; *Handley* v. *Stutz*, 137 *U. S.* 369; *New Orleans Pacific Ry.* v. *Parker*, 143 *U. S.* 51; *Texas & Pacific Ry. Co.* v. *Gentry*, 163 *U. S.* 361; *Davis* v. *Schwartz*, 155 *U. S.* 631, 647.

It is said that as to any single one of the claims in question the plaintiffs in the present case could have released the lands in which they had an undivided interest, by paying that particular claim; therefore, it is argued, the value of the matter in dispute, as between the plaintiffs and such defendant, was the amount of the latter's claim. And so as to each separate claim. But that same thing could have been said as to the respective claims involved in *Shields* v. *Thomas*. The defendant there could have paid off any of the respective claims involved. This court, however, held that fact to be immaterial because the defendant disputed the validity of the original decree holding him liable for all the claims, and had no concern as to how the whole amount decreed against him was to be distributed. So here, the plaintiff suing to protect their common undivided interest in lands put in peril by fraudulent orders obtained by the defendants acting in combination to obtain such orders for their benefit, is only concerned in preventing the defendants from proceeding under the orders of the Probate Court, which they procured for their benefit equally, and under which they all now equally claim. The plaintiffs made no contest as to particular claims. They dispute all of them as claims against Hiram Evans' estate. If the orders of the Probate Court stand for the benefit of the respective defendants, then the plaintiffs' interests in the lands are liable for all the claims asserted by the defendants; for there is no dispute here as to the amount of any particular claim. Hence, as we have said, the value of the matter in dispute is the aggregate amount of the claims fraudulently procured by the defendants acting in combination to be allowed in the Probate Court as claims against the estate of Hiram Evans.

For the reasons stated we hold: 1. That it was competent for the Circuit Court upon the case made by the bill to deprive the defendants, acting in combination and claiming the benefit of the orders made in the probate allowing their respective claims. 2. That the value of the matter in dispute in the Circuit Court was the aggregate amount of all the claims so allowed against the estate of Hiram Evans.

The decree is reversed with directions to set aside the order dismissing the suit for want of jurisdiction, to overrule the demurrer, and for further proceedings as may be consistent with this opinion and with the law.

Reversed.

True copy.

Test:

Clerk Supreme Court, U. S.